



# Oregon

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**To:** Oregon Energy Facility Siting Council

**From:** Christopher M. Clark, Rules Coordinator

**Date:** January 8, 2021

**Subject:** Agenda Item C (Action Item) – 2021-2023 Rulemaking Update for January 22, 2021 Council Meeting

**Attachment:** Attachment 1 Proposed 2021-2023 Rulemaking Schedule

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## BACKGROUND AND SUMMARY

When a Council member, stakeholder, or staff member raises an issue related to a rule, policy, or procedure under the Council's jurisdiction, staff documents the issue and evaluates whether rulemaking is needed to address it. Unlike issues in a contested case or other formal proceeding, rulemaking issues may be raised at any time, such as during a Council meeting, in public comments, or in written advice to the Council's Rules Coordinator. When several related issues are identified, they may be combined to form a rulemaking project for the Council's consideration. Each year, the Council prioritizes previously approved and newly proposed rulemaking projects based on factors including urgency, level of public interest, and complexity.

This staff report provides an overview of the rulemaking process, describes current and recently completed rulemaking activities, and provides staff's recommendations for the prioritization of previously approved and newly proposed rulemaking projects for the next three years. For each previously approved or newly proposed rulemaking project the Council may:

- Authorize staff to conduct preliminary work on the rulemaking project as part of the rulemaking schedule;
- Reprioritize or postpone development of the rulemaking project; or
- Remove the project from the rulemaking schedule.

For each rulemaking project, staff have also proposed a method for involving the public in the development of proposed rules, such as soliciting written advice or using a Rulemaking Advisory Committee (RAC). While staff will seek final approval of the method for public involvement at the initiation of a rulemaking project, staff requests Council's preliminary approval of the anticipated methods to assist in the scoping and planning process for each project. If Council does not concur with staff's recommendation it may direct staff to pursue a different method.

This rulemaking schedule update describes all ongoing, pending, or proposed rulemaking projects which staff anticipates to work on in this period (2021-2023), however additional rulemaking projects or rulemaking activities may be proposed before the next update in response to stakeholder petition, statutory changes, or issues of emergent concern.

In addition to rulemaking projects, staff may propose other corrections or housekeeping changes for Council's consideration during regular Council meetings. Staff may also file minor corrections to update rule references, correct scrivener's errors, or make other changes described under ORS 183.335(7) as authorized by OAR 345-011-0005(4).

## **RULEMAKING PROCESS OVERVIEW**

A rule is any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency.<sup>1</sup> An agency, including Council, must adopt rules for several reasons, including to meet a statutory obligation to adopt rules; to interpret broad statutory authority delegated by the legislature; or to amend, suspend or repeal existing rules.

ORS 469.470 requires Council to "adopt standards and rules to perform the functions vested by law in the council including the adoption of standards and rules for the siting of energy facilities pursuant to ORS 469.501, and implementation of the energy policy of the State of Oregon set forth in ORS 469.010 and 469.310." Several other sections of ORS chapter 469 supplement this broad rulemaking mandate with specific rulemaking requirements.

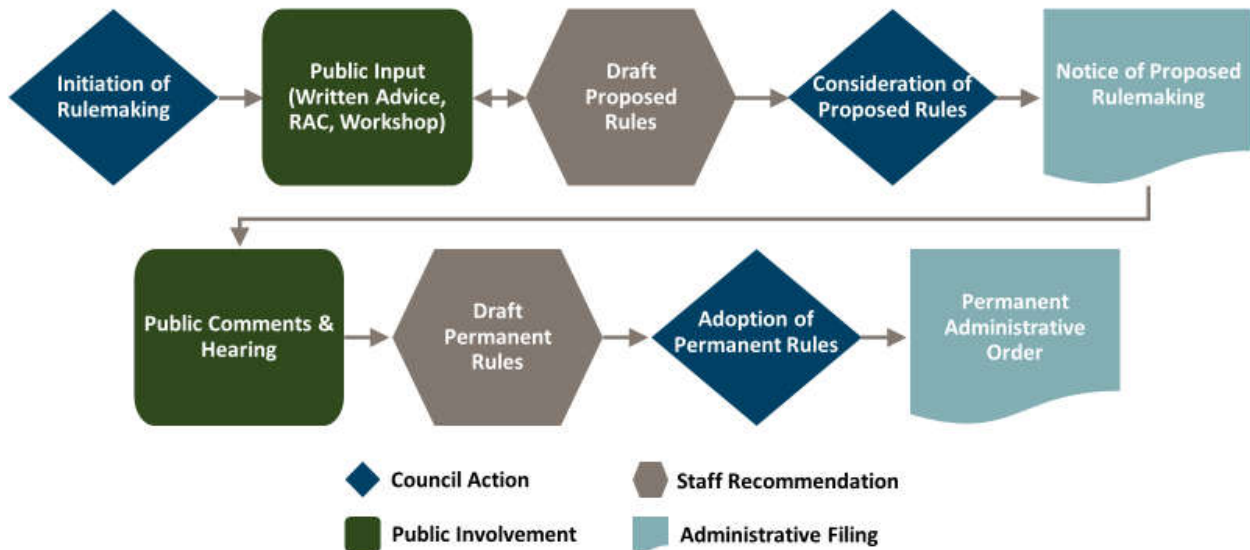
The rulemaking process is governed by ORS chapter 183, the Administrative Procedures Act (APA). Among other things, the APA requires each agency that adopts rules to appoint a rules coordinator, provide notice of permanent rulemaking, and to give interested persons a reasonable opportunity to submit data or views on proposed rulemaking actions.<sup>2</sup> Figure 1 provides an overview of the typical permanent rulemaking process used by the Council.

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<sup>1</sup> ORS 183.310(9).

<sup>2</sup> ORS 183.330(2), ORS 183.335(1), and ORS 183.335(3).

**Figure 1. Overview of Permanent Rulemaking Process**



Generally, the rulemaking process takes between three and twelve months to complete. The amount of time needed to complete a rulemaking project depends on the complexity of issues and the level of public interest and involvement.

The APA encourages agencies to involve the public in the development of proposed rules and to seek public input to the maximum extent possible before giving notice of intent to adopt a rule. Options for involving the public include inviting interested parties to provide advice on a rulemaking issue, appointing a rulemaking advisory committee (RAC), or hosting a public workshop.<sup>3</sup>

Appointing a RAC may increase the amount of time needed to develop proposed rules, but the RAC’s input may improve the quality of the proposed language and may help the agency identify and address concerns and potential issues with proposed rules before the public comment period. If the Council determines that a RAC is appropriate for a rulemaking project, staff will provide a list of potential organizations and individuals that may be interested in participating so that Council may appoint RAC members. Staff will also ask Council for input on the number and location of any RAC meetings. For rulemaking projects where the Council has included public workshops in the rulemaking process, staff will ask Council for its input on the number and location of any public workshops before any workshop is convened.

Staff will consider advice provided by the Council, any rules advisory committee, and the general public when drafting proposed rules, and may seek additional advice on specific rule language or issues. Council will consider proposed rules and will either direct staff to issue a Notice or Proposed Rulemaking or direct staff to make additional changes to the proposed rules. Once the proposed rules and notice are approved, staff will file the notice with the Secretary of State. A rulemaking hearing is not always required but will generally be held before Council near the end of the public comment period. After fully considering comments and oral testimony received during the public comment period Council may adopt, amend, or repeal rules. Council may also suspend a rulemaking project at any time during the process.

<sup>3</sup> ORS 183.333.

## **RULEMAKING ACTIVITY IN 2020**

At its November 22, 2019 meeting, \Council approved a schedule of rulemaking projects to be undertaken during the 2020-2022 period.

### Completed Projects

The Council adopted permanent rules associated with five rulemaking projects in 2020, including two projects which were identified after the 2020-2022 schedule was approved.<sup>4</sup> A brief summary of each completed project follows.

#### *Solar PV Facilities (R183)*

The Council adopted rules clarifying application and interpretation of jurisdictional thresholds for solar photovoltaic power generation facilities. The permanent rules were filed under Administrative Order EFSC 3-2020 and became effective on June 30, 2020. Because this rulemaking project adopted a new rule, a five-year review must be completed.

#### *Amendments 2019 (R196)*

At its January 24, 2020 meeting, the Council adopted new rules to govern the site certificate amendment review process in response to the Oregon Supreme Court's decision in *Friends of the Columbia Gorge v. EFSC* that found the previously rules were invalid due to a procedural error.<sup>5</sup> The new rules are substantively similar to the previous rules, except that provisions related to judicial review that were determined to have exceeded the Council's statutory authority were removed. The rules were filed under Administrative Order EFSC 1-2020 and became effective on January 28, 2020.

During the proceedings to adopt the new rules, the Council committed to conducting a new rulemaking project to review any outstanding substantive issues related to the new rules within two years after their adoption. As discussed further in the section on the 2022 Site Certificate Amendment Rulemaking Project, the Department recommends the Council initiate this rulemaking in early 2022 and conduct the statutorily required 5-year review of the new rules as part of the project.

#### *2020 Carbon Offset Rate Update (R203)*

The Council increased the monetary offset rate for carbon dioxide emissions from new energy facilities to \$2.85 per ton, effective July 1, 2020. The rate is used to determine the amount of carbon dioxide offsets required for a facility to satisfy the Council's Carbon Dioxide Emissions Standard. The rate increase was adopted under Administrative Order EFSC 2-2020.

As discussed further below, the Department recommends a new rulemaking project to review the monetary offset rate in early 2022 to determine if further adjustment is appropriate at that time.

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<sup>4</sup> Staff also filed three minor statutory corrections under ORS 183.335(7), as authorized under OAR 345-011-0005(4).

<sup>5</sup> August 1, 2019, SC S0665478.

### *Clarification of Standard for Contested Case in Type A Amendment Review (R206)*

At its meeting on August 21, 2020, Council adopted permanent rules which amend OAR 345-027-0371(9) to clarify the Council's Standard for an issue to justify a Contested Case proceeding in the Type A amendment review process. The new rule was adopted under Administrative Order EFSC 4-2020 and became effective on August 24, 2020.

### *Safe Public Meetings and Hearings (R207)*

At its meeting on October 23, 2020, Council adopted a new permanent rule intended to allow the Council or Chair to waive any provision of rule requiring that a public meeting or public hearing be held in person or in a specific geographical area, if the Council or Chair finds that in person attendance at the meeting or hearing would present a risk to public health or safety or the health and safety of the participants. The rule does not apply to any meeting or hearing otherwise required to be held in-person or in a specified geographic location by ORS chapter 469 or contested case hearings. The new rule was adopted under Administrative Order EFSC 6-2020 and became effective on November 19, 2020. Because this rulemaking project adopted a new rule, a five-year review must be completed.

### Current Rulemaking Activities

In addition to the projects that were completed, staff began work on two projects approved in the 2020-2022 Rulemaking Schedule.

### *Protected Areas, Recreation, & Scenic Resources (R184)*

At its October 23, 2020 meeting, the Council initiated a review of the Protected Areas, Scenic Resources, and Recreation Standards and associated rules to ensure that the areas, designations, and resources protected by rules are up to date and that rules are clear and consistent with the Council's review process. Staff issued a request for stakeholders to provide comments and recommendations for the scope and conduct of the rulemaking by December 31, 2020. Staff is currently reviewing the advice received and expects to provide its preliminary recommendations for Council's consideration in early 2021.

### *Radioactive Materials Enforcement (R195)*

The Council approved a rulemaking project to identify potential updates to OAR chapter 345 division 050 and other rules related to Radioactive Materials and Wastes as part of its 2020-2022 Rulemaking Schedule. In its preliminary review, staff determined that statutory limitations precluded many changes to the division 050 rules, but some work could be undertaken to improve the enforcement of existing laws and rules governing the transport and disposal of radioactive materials and waste in Oregon. At its May 21, 2020 meeting, the Council initiated rulemaking with a revised scope focused on updating the enforcement rules in OAR chapter 345, division 029 as they relate to radioactive materials and wastes. The Council considered proposed rules at its December 18, 2020 meeting; Notice of Proposed Rulemaking was issued on January 4, 2021.

While the current rulemaking is expected to be completed in early 2021, additional rulemaking may be required if the legislature enacts legislation related to the transport or disposal of radioactive materials in the 2021 legislative session.

## PROPOSED RULEMAKING PROJECTS FOR 2021-2023

A number of projects approved by the Council during its 2020 update are still pending. While staff have attempted to maintain some consistency with previous updates, some reprioritization of projects was required to reflect commitments and priorities that arose during 2020. A table providing a summary of the proposed rulemaking projects and their anticipated timing is included in **Attachment 1**.

In March 2020, the Governor issued Executive Order (EO) 20-04, directing state agencies to take actions within their statutory authority to help achieve Oregon's greenhouse gas reduction goals. State agencies, including the Department of Energy, were required to submit an implementation plan describing the actions they would take to prioritize and expedite processes and procedures that could accelerate reductions in greenhouse gas emissions. The Department identified three rulemaking projects related to energy facility siting in its EO 20-04 implementation plan, including the Carbon Standard rulemaking that Council completed in 2020, the Noise Standard project previously approved for 2020, and the Application Process Review previously approved to begin in 2022.

Staff have recommended the Noise Standard and Application Process Review projects be reprioritized consistent with the EO 20-04 Implementation Plan. In particular, staff recommends that the Application Process Review Project be conducted in three phases, with the first phase beginning in early 2021. The three phases would be conducted as follows:

- Phase 1: Reorganize rules in divisions 015 to 026 to create clear separation of procedural and substantive provisions in rules and simplify procedures for review where practicable.
- Phase 2: Review application information and procedural requirements currently located in division 020 and 021 to ensure that requirements align with what is needed to demonstrate compliance with the Council's standards.
- Phase 3: Evaluate standards and substantive requirements to determine if requirements should be adjusted for different types of energy facilities, including facilities which generate energy from renewable resources.

In addition to the rulemaking projects, the Department committed to a comprehensive evaluation of the energy facility siting program as part of its EO 20-04 Implementation Plan. As with the Application Process Review rulemakings described above, this evaluation may lead to a reduction in greenhouse gas emissions by potentially making the process for siting low carbon energy facilities more efficient and timely. This evaluation will be undertaken consistent with the Department's ongoing strategic planning effort, which will involve an assessment of other existing programs and activities as well. The Department is currently preparing a Request for Proposals to hire an outside consulting firm to conduct the siting program evaluation, which will include conducting outreach to the public and stakeholders, and preparing a report with recommendations for process improvements, rulemaking, and legislative concepts to make the process more efficient, timely, and responsive to stakeholder and public issues or concerns. We anticipate that Phase 2 of the Application Review Process Project and the General Compliance Project may benefit from these recommendations and have adjusted the proposed timing accordingly.

### Rulemaking Projects Proposed for 2021

#### *Application Process Review – Phase 1 (R211)*

To issue a site certificate, the Council must find the facility complies with the applicable standards adopted by the Council or that the overall public benefits of the facility outweigh any adverse effects on a resource or interest protected by the applicable standards the facility does not meet. The Council has adopted 14 General Standards that are applicable to all proposed facilities as well as additional standards applicable to specific types of energy facilities.

The Council's rules describe all the information that must be provided as part of a Notice of Intent, Application for Site Certificate and Request for Site Certificate Amendment in order to demonstrate compliance with the standard. Over time, the Council has separately amended standards and application requirements and, in some cases, the relationship between the application requirements and applicable standard is not clear. This project is intended to create efficiencies and reduce the time and costs associated with siting reviews while having no negative effect on public participation. In particular, these rulemakings would clarify and simplify application requirements to reduce the need for requests for additional information during the application review process, improve consistency and standardization in the review process, and make the process clearer and more understandable for applicants, reviewing agencies, and interested members of the public.

As most site certificate applications are for solar and wind facilities, these process improvements could facilitate greenhouse gas reductions by resulting in siting these low carbon projects in a more efficient and timely way.

Phase 1 of the project would reorganize rules in divisions 015 to 026 to create clear separation of procedural and substantive provisions in rules. While this phase would primarily be organizational, it would also seek to clarify and simplify existing procedures for the application review process where practicable, consistent with the intent and objectives described above.

Consistent with the EO 20-04, staff expects to begin work on Phase 1 in early 2021. Because of the complex nature of this project, and the high level of stakeholder interest anticipated, staff recommends Council appoint a Rulemaking Advisory Committee for the project, with the expectation that committee membership may be amended or supplemented for each phase.

#### *Trojan ISFSI (R184)*

The Trojan Nuclear Power Plant (Trojan) was a 1,130-megawatt nuclear-fueled power plant located in Columbia County, Oregon and operated by Portland General Electric (PGE). PGE ceased operations of the power plant in late 1992 and began decommissioning the site shortly thereafter. As part of the decommissioning process, all of the spent fuel from the power plant was transferred to an on-site Independent Spent Fuel Storage Installation (ISFSI). The site certificate for Trojan remains active for ongoing operation of the ISFSI. The site certificate does not contain conditions or findings related to compliance with the Council standards, instead, it requires PGE to comply with rules adopted by the Council. Rules specific to Trojan are found in OAR 345-026-0300 to 345-026-0390.

In August 2019, the U.S. Nuclear Regulatory Commission (NRC) renewed PGE's Special Nuclear Materials License (License No. SNM-2509), authorizing operation of the Trojan ISFSI until March 31, 2059. ODOE staff are currently evaluating the safety evaluation report, technical specifications, and environmental assessment associated with the renewed license. This rulemaking project is intended to make any changes to the rules that are found to be necessary to maintain consistency with federal laws and regulations, and the monitoring and safety requirements of the renewed license.

Staff expects to finalize its evaluation of the renewed license and make preliminary recommendations for rulemaking in early 2021. Because the rules have limited applicability, and because the proposed scope is limited to improving consistency with federal procedural requirements, staff recommends that the Council rely on written advice from interested stakeholders and the public to assist in the development of proposed rules.

#### *Research Reactors (R202)*

Oregon State University and Reed College both operate TRIGA Class nuclear research reactors for training, research, and isotope analysis. Like other nuclear installations, the research reactors operate under licenses issued by the NRC, and the Council provides state level monitoring and oversight of the facilities as provided by their site certificates and the administrative rules in OAR chapter 345, division 030. This rulemaking project would update division 030 and other rules applicable to research reactors to ensure consistency with federal reporting and notification requirements.

This rulemaking project was previously approved as part of the 2020 rulemaking update. Staff has conducted preliminary research and analysis for the project and expects to request Council to initiate rulemaking in early 2021. Because the rules have limited applicability, and because the proposed scope is limited to improving consistency with federal procedural requirements, staff recommends that the Council rely on written advice from interested stakeholders and the public to assist in the development of proposed rules.

#### *Wildfire Prevention & Response (R215)*

In November 2019, the Governor's Council on Wildfire Response, established by EO 19-01, released its final report and recommendations to improve wildfire prevention, preparedness, and response in Oregon. The report contains a number of recommendations relating to energy facility siting, including recommendations to improve structural resiliency to wildfire and ensure electrical utilities implement best-practice risk mitigation strategies to reduce human-caused ignitions.

The report recommended the Oregon Public Utility Commission (OPUC) develop requirements for utility scale wildfire risk mitigation planning, and OPUC is currently conducting rulemaking to carry out this recommendation.<sup>6</sup> The OPUC rulemaking is primarily intended to address wildfire mitigation plans developed by electric utilities and planned wildfire risk-mitigation activities related to the electric transmission and distribution system. This project would build upon OPUC's efforts and evaluate whether the Council should adopt similar or complementary standards or requirements related to wildfire prevention, preparedness, or response for energy facilities, including but not limited to transmission lines constructed to connect an energy facility with a point of interconnection with the transmission grid, as part of the siting review process.

This project was not included in previous rulemaking updates, but staff recommends prioritizing the project for 2021 due to its potential implications for public health and safety and the high level of public and Council interest in this topic. To avoid inadvertently creating duplicative or conflicting requirements, staff will not request Council initiate this project until the 2021 Legislative Session and the rulemaking being conducted by OPUC has concluded.

When the project is initiated, staff recommends Council appoint a RAC to assist in the development of proposed rules for this project.

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<sup>6</sup> See PUC Docket AR 638



### *Exemptions (R185)*

Certain energy facilities are exempt from the requirement to obtain a site certificate under ORS 469.320. Depending on the type of facility, the person who wishes to claim an exemption may be required to submit an exemption request subject to Council's review and approval. The Council's rules for exemption requests are currently located under OAR 345-015-0350 to 345-015-0380.

This rulemaking project would evaluate several outstanding policy questions related to exemptions, including whether the Council may impose conditions on an exemption, ongoing monitoring and reporting requirements for exempt facilities, and the process for loss of an exemption. Staff notes that the Department has put forward a legislative concept that would remove the requirement for a person seeking exemption for a standby generation facility to submit a request to Council. This project would also implement conforming changes to rules needed to implement the legislation if it is enacted in the 2021 session.

### Rulemaking Projects Proposed For 2022

#### *Application Process Review – Phase 2 (R212)*

Phase 2 of the Application Process Review Project will include review of application information and procedural requirements currently located in division 020 and 021 to ensure that requirements align with what is needed to demonstrate compliance with the Council's standards. If requirements that do not align with an existing standard are identified, staff will evaluate whether the requirements should be removed, or if the standards should be modified. This project is expected to incorporate recommendations produced by the siting program evaluation being conducted as part of the EO 20-04 implementation plan, although preliminary work to identify issues and possible rule changes may begin before the evaluation is finalized.

Due to the complex nature of this project, and the high level of stakeholder interest anticipated, staff recommends Council appoint a Rulemaking Advisory Committee (RAC) for the project, with the expectation that committee membership may be amended or supplemented for each phase.

#### *2022 Site Certificate Amendment Rulemaking (R204)*

This project would review the rules governing the site certificate amendment review process under OAR chapter 345, division 027. The project would evaluate outstanding issues raised by stakeholders during the rulemaking proceedings on the permanent amendment rules adopted in January 2020 and would evaluate options to improve opportunities for public participation while minimizing adverse economic impacts on certificate holders. Staff notes that many of the issues identified for this project are related to the standard for obtaining a contested case hearing on a request for amendment, and the associated requirements for preserving standing and raising issues. Staff anticipates that some of the stakeholder input provided during this project will also be relevant to the Contested Cases Rulemaking Project scheduled for 2023.

The Council has committed to initiating this rulemaking in 2022, and staff will begin preliminary work in 2021. Due to the high level of public interest in the project, staff recommends a RAC be appointed to assist in the development of proposed rules.

### *Historic, Cultural and Archaeological Resources (R194)*

OAR 345-022-0090 requires Council to find that the construction and operation of a facility, taking into account mitigation, are not likely to result in significant adverse impacts to certain historic, cultural or archaeological resources.

Staff often recommends that applicants coordinate with tribal cultural resource specialists early in the application process to better identify historic, cultural or archaeological resources under OAR 345-022-0090. This rulemaking project would evaluate additional options to encourage communication between applicants and tribal governments to identify historic, cultural, and archaeological resources early in the application process.

Staff proposes to hold one or more public workshops on this rulemaking project in areas that are accessible to interested tribal members or government representatives. While this project was initially expected to begin in late 2020, staff proposes postponing the rulemaking until early 2022 in part to improve the chances that in-person meetings will be possible.

### *General Compliance (R182)*

This project would consist of a review of the rules for construction and operation of energy facilities under OAR 345-026-0005 to 345-026-0170. Generally, the rulemaking would focus on improving the clarity and consistency of requirements and providing additional specificity for monitoring and reporting requirements and timeframes.

Council previously approved this project to begin in 2018 and appointed a RAC to begin development of proposed rules for the project, however due to staffing issues within the Department, the rulemaking did not move forward at that time. Staff recommends that Council reprioritize this project to begin in 2022, after the siting program evaluation being conducted as part of the EO 20-04 implementation plan has been completed and any recommendations for the compliance program are finalized.

### *2022 Carbon Dioxide Offset Rate Update (R217)*

The carbon dioxide offset rate is used to determine the amount of offset funds required for a facility to satisfy the Council's Carbon Dioxide Emissions Standard under OAR 345-024-0540. The Council may increase or decrease the monetary offset rate by up to 50 percent in any two-year period, if empirical evidence of the costs of offsets shows that a change in the rate is justified and that the new rate will be economically achievable. The Council last increased the rate from \$1.90 to \$2.85 per ton, effective July 1, 2020. At that time the Council determined that the cost of offsets justified an even higher rate and that further increases should be considered when allowed by the statute.

Staff recommends the Council schedule a new review of the rate in early 2022 so that an adjusted rate could be in place by July 1, 2022. Staff recommends Council appoint a Fiscal Advisory Committee to assist in the development of proposed rules and provide advice on the economic achievability of any proposed increase.

## Rulemaking Projects Proposed for 2023, or Later

### *Contested Cases (R214)*

Interest and participation in the contested case process has increased in recent years, and several high-profile contested cases have raised issues regarding the Council's rules for contested cases under OAR chapter 345, division 015. This rulemaking project would evaluate these issues and make rulemaking recommendations to improve clarity in the process and improve consistency with the Attorney General's Model Rules for Contested Cases under OAR chapter 137 and the Quasi-Judicial Land Use Hearing process used by local governments. Specific topics that could be considered include the process for appointing hearing officers, requirements for preserving standing and raising issues, and the availability and use of procedural motions.

Staff has proposed to begin this project in 2023, although we note that some issues related to contested cases may be addressed during Phase 2 of the Application Process Review and the 2022 Site Certificate Amendment Rulemaking Project. Due to the complex nature of the contested case process and the high level of public interest, staff recommends Council appoint a RAC to assist in the development of proposed rules for this project.

### *Application Process Review – Phase 3 (R213)*

Phase 3 of the Application Process Review would evaluate the Council's standards and substantive requirements to determine if requirements should be adjusted for different types of energy facilities, including facilities which generate energy from renewable resources. Specific recommendations would be informed by the siting program evaluation being conducted as part of the EO 20-04 implementation plan and advice provided during Phase 1 and Phase 2 of the project. Staff notes that one output of this project may be proposals for subsequent rulemaking projects focused on specific standards or groups of standards linked by subject matter or interest groups.

Because of the complex nature of this project, and the high level of stakeholder interest anticipated, staff recommends Council appoint a RAC for the project, with the expectation that committee membership may be amended or supplemented for each phase.

### *Noise Standard (R193)*

In the 1970's and 1980's the Environmental Quality Commission (DEQ) adopted standards for noise emissions from industrial and commercial sources, including energy facilities, under OAR 340-035-0035. In 1991, the Legislative Assembly withdrew all funding for DEQ's noise program and DEQ suspended all activities related to the implementation or enforcement of the rules, but the standards remain in place. The Council's rules, under OAR 345-021-0010(1)(x), require applicants to provide information about noise that may be generated by construction and operation of the proposed facility, to support a finding by Council that the proposed facility complies with the noise control standards under OAR 340-035-0035. This rulemaking project would review how DEQ noise control standards apply to energy facilities and evaluate if Council should consider rule changes to improve clarity and efficiency in verifying compliance for energy facilities.

This project was previously approved to begin in 2021, however, staff recommends postponing the project to be conducted in conjunction with the evaluation of other Council standards and substantive requirements during Phase 3 of the Application Process Review. In the meantime, staff will begin

preliminary work with DEQ staff to determine the scope of potential changes to the Council's rules given the existing rules in OAR 340-035-0035.

#### *Geospatial Resources (R201)*

This rulemaking project would consider options to improve the collection and use of geospatial data and resources in the siting process, including but not limited to, requiring applicants and certificate holders to submit GIS data for energy facilities; and, use of tools, analysis, and recommendations produced by the Oregon Renewable Energy Siting Assessment (ORESAs) Project, which the Department is conducting in partnership with the Department of Land Conservation and Development and Oregon State University's Institute for Natural Resources through a grant from the U.S. Department of Defense Office of Economic Adjustment.

Due to the technical nature of the subject matter and broad applicability, staff recommends the Council appoint a RAC to assist in the development of proposed rules.

#### *Natural Hazards Mitigation (R216)*

Oregon's Natural Hazards Mitigation Plan (NHMP) provides statewide and regional information on the natural hazards most likely to occur in the state. The NHMP also reports on the potential impacts of natural hazards on people, property, and the environment, and establishes a mitigation strategy to reduce those impacts. Oregon's latest NHMP was approved on September 24, 2020 and is expected to be updated in 2025.

This rulemaking project would evaluate whether and how the siting review process can support the goals of the NHMP and implement natural hazard mitigation strategies either by amending the Land Use or Structural Standards and associated information requirements or adopting a new standard. The scope and timing of this project will likely be influenced by the Wildfire Prevention & Response Project and Phase 3 of the Application Process Review Rulemaking Project. Due to the technical nature of the subject matter, and the potential for fiscal or economic impacts on certificate holders, staff recommends the Council appoint a RAC to assist in the development of proposed rules for this project.

#### *Mandatory Conditions (R205)*

This project would review rules in OAR 345-025 to ensure that the mandatory conditions specified by rule are clear, complete, and necessary to be included in each site certificate and would consider options for allow greater flexibility to address site specific conditions and circumstances. Due to the technical nature of the subject matter, and the potential for fiscal or economic impacts on certificate holders, staff recommends the Council appoint a RAC to assist in the development of proposed rules for this project.

### **PENDING 5-YEAR REVIEWS**

Within five years after adopting a new rule, the Council must conduct a review to determine:

- Whether the rule has had the intended effect;
- Whether the anticipated fiscal impact of the rule was underestimated or overestimated;
- Whether subsequent changes in the law require that the rule be repealed or amended;
- Whether there is continued need for the rule; and
- What impacts the rule has on small businesses.

After the review, the Council must submit its findings to the Secretary of State, the Small Business Rules Advisory Committee, and any RAC appointed by the Council to assist in the development of proposed rules.

The Council currently has three 5-years reviews pending. All three reviews are for new rules adopted in 2020, so the reviews all must be completed by 2025.

#### OAR 345-001-0250 – Solar Photovoltaic Power Generation Facilities

As part of the Solar PV Facilities Rulemaking Project, the Council adopted a new rule explaining the criteria and process for determining when a proposed solar photovoltaic power generation project is an expansion of an existing or proposed solar photovoltaic power generation facility. The 5-year review of this new rule must be completed by June 26, 2025.

#### OAR 345-015-0003 - Remote and Electronic Public Meeting and Hearings

At its meeting on October 23, 2020, the Council adopted a new rule authorizing the Council or Chair to waive any provision of rule requiring that a public meeting or public hearing be held in person or in a specific geographical area, if the Council or Chair finds that in person attendance at the meeting or hearing would present a risk to public health or safety or the health and safety of the participants. The 5-year review of this rule must be completed by October 23, 2025.

#### OAR 345-027-0311 to 345-027-0400 – Amendment of Site Certificates

Following the Oregon Supreme Court’s finding that rules governing the process for review of site certificate amendment requests adopted by the Council in 2017 were invalid, the Council conducted rulemaking to repeal the invalidated rules and adopted new permanent rules in their place. While these new rules are substantively similar to the previous rules, a 5-year review is still required to be completed by January 28, 2025.

During the proceedings to adopt the new rules, the Council committed to initiating a new rulemaking project to review any outstanding substantive issues related to the new rules within two years after their adoption. The Department proposes to complete the 5-year review of the new amendment rules as part of this project, which is discussed further in the section on the 2022 Site Certificate Amendment Rulemaking Project.

### **STAFF RECOMMENDATIONS**

Staff recommends Council approve staff to begin preliminary work on developing the proposed rulemaking projects for 2021-2023 described in this staff report, either as presented or with modifications.