

# Attachment 4A



**Portland General Electric**  
121 SW Salmon Street • Portland, Ore. 97204  
PortlandGeneral.com

8/18/2023

Tom Jackman  
Rulemaking Coordinator  
Energy Facility Siting Division  
Oregon Department of Energy  
550 Capitol Street NE  
Salem, OR 97301

Subject: PGE Comments on the Application Process Review Phase 1 Rulemaking

Dear Mr. Jackman,

Thank you for the opportunity to provide comments on the Energy Facility Siting Council's rulemaking on Application Process Review Phase 1 rulemaking. As the state's largest utility, PGE currently operates five facilities with site certificates issued by the Energy Facility Siting Council (Biglow Canyon Wind Farm, Carty Generating Station, Coyote Springs Cogenerating Project, Port Westward Generating Project, and Wheatridge Renewable Energy Facility I). Together with customers, communities, and partners, we are creating a safe, reliable, clean, and accessible energy future for all. As PGE seeks additional renewable energy resources it is important that the process for new site certificates and requests for amendment is clear and moves forward in a predictable manner.

PGE has two comments on the Phase 1 rulemaking:

1. Printed Copies: PGE requests that the Department evaluates the need for printed copies throughout the rules. Notices of Intent, Applications, and Amendments can be thousands of pages and while some of the rule language limits the number of printed copies to two; other rule language allows for the potential of unlimited requests for printed copies. If not willing to eliminate the need for printed copies altogether, please consider language that would allow for the Department to have control and decision over the number of printed copies necessary.
2. Land Management Agency with Jurisdiction: In the proposed updates to OAR 345-015-0194(1)(d), -0230, and -0310 there are repeated additions of notification to "the land management agency or organizations with jurisdiction over the protected areas identified in the proposed order." We suggest that this language clarify if the agencies mentioned are limited to state and local agencies or if federal agencies would be included. The definitions in OAR 345-001-0010(28) clarify when federal agencies are *reviewing* agencies.

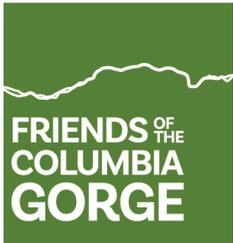
If the Department determines that Phase 1 is not the appropriate time to address these comments, please consider moving them forward when developing Phase 2 or 3.

Thank you again for the opportunity to provide comments. We look forward to continuing work with the Council on current and future projects.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sania Radcliffe'.

Sania Radcliffe  
Director, Government Affairs and Environmental Policy  
Portland General Electric



*SUBMITTED VIA E-MAIL ONLY*

August 18, 2023

Oregon Energy Facility Siting Council  
c/o EFSC Rules Coordinator

Via email to [EFSC.rulemaking@oregon.gov](mailto:EFSC.rulemaking@oregon.gov) and [EFSC.rulemaking@energy.oregon.gov](mailto:EFSC.rulemaking@energy.oregon.gov)

**Re: Comments on EFSC Application Process Phase 1 Rulemaking**

Dear Chair Grail and Council Members:

Friends of the Columbia Gorge (“Friends”) submits the following preliminary comments regarding the EFSC Application Process Phase 1 Rulemaking. Friends is a nonprofit organization with approximately 5,000 members dedicated to protecting and enhancing the resources of the Columbia River Gorge, and 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.

**1. The Council should establish and publicly announce a new deadline for written comments on this rulemaking.**

For the first five weeks of the six-week comment period for written comments on this rulemaking, the EFSC Rulemaking webpage at <https://www.oregon.gov/energy/get-involved/pages/energy-facility-siting-council-rulemaking.aspx> erroneously and misleadingly stated that the deadline for written comments on this rulemaking had already passed, and that it was too late to submit written comments on the rulemaking. (Exhibit A.) This serious error may very well have discouraged public participation on the rulemaking through written comments.

Although the error was promptly corrected by the Department after it was brought to the attention of the Rules Coordinator, the correction was done quietly, more than five weeks into the comment period, and without any notice to the public of the error or the correction.

The Department takes the position that the Council’s rulemaking webpage is merely “a courtesy to the public” and that there is no need to remedy this serious error other than the quiet correction discussed above. (Exhibit A.) The Department’s position does not foreclose the possibility that the webpage, referred to by the Department as a “courtesy to the public,” may actually have *harmed* the public and undermined public participation by grossly misstating the

deadline. By analogy, imagine a self-declared “courtesy” website that advises the public of the wrong date to vote in an election. Such a website could hardly be called a “courtesy” at all.

The Department also takes the position that there is very little interest from the public in this rulemaking. (*See* Exhibit A.) That may very well be the case, but it is impossible to know—let alone measure—how much this perceived lack of interest might actually have been caused by the misleading and erroneous date provided on the Rulemaking webpage. After all, for more than five weeks, anyone who checked and relied on that webpage for the comment deadline would certainly have had little interest in commenting if they thought the deadline had already passed.

Under the circumstances, and in order to allow for meaningful public participation and written comments, Friends of the Columbia Gorge requests the establishment and public announcement of a new deadline for written comments on this rulemaking.

**2. Proposed Rule 345-015-0180(1) should be clarified to avoid any misinterpretation that all preliminary applications must or will eventually be deemed complete.**

Friends recommends adding the words “Unless and” at the beginning of Proposed Rule 345-015-0180(1), as shown below:

(1) **Unless and U**ntil the Department determines the application to be complete as described in OAR 345-015-0190 or 345-015-0310, it is a preliminary application.

Without that clarifying change, the rule could be misinterpreted as implying that every preliminary application must or will eventually be deemed complete. In circumstances where an applicant fails to complete a preliminary application, it should *not* be deemed complete. The suggested minor revisions to the rule would help avoid misinterpretations of the rule.

**3. Proposed Rule 345-015-0190(7) should be revised as originally proposed by the Department, plus additional clarifying revisions. The same revisions should also be made to Proposed Rule 345-015-0310(11).**

In an earlier draft of the proposed rules, the Department recommended the following language for Proposed Rule 345-015-0190(7):

After a determination that an application is complete, if the Department identifies a need for additional information during its review of the application, the applicant must submit additional information to the Department. Submission of such information does not constitute an amendment of the application.

Despite that earlier recommendation by the Department, this revised language does not appear in either the notice of rulemaking or the draft permanent rulemaking order. It is unclear why the previously recommended revised language was subsequently dropped from the rulemaking.

Friends encourages the Council to use the language originally recommended by the Department for Proposed Rule 345-015-0190(7, but *only if* the following important additional revisions are included, as shown below:

After a determination that an application is complete, if the Department identifies a need for additional information during its review of the application **and requests such additional information**, the applicant must submit **that** additional information to the Department. Submission of such information does not constitute an amendment of the application.

The additional revisions suggested herein are necessary for two reasons. First, the Department should be expressly required to communicate a request to an applicant for any additional information.

Second, and more importantly, the rule should be clarified to avoid scenarios wherein an applicant argues that “additional information” submitted by the applicant satisfies the rule, even if it is not responsive to the Department’s request for additional information. The current wording of OAR 345-015-0190(9) avoids this problem with the word “that”: “After a determination that an application is complete, the applicant must submit additional information to the Department if the Department identifies a need for *that* information during its review of the application. Submission of such information does not constitute an amendment of the application” (emphasis added). The word “that” should not be removed from the rule language as the Department was originally recommending. Rather, the revised language shown above (which reinserts the word “that”) should be adopted.

The same revisions as shown above should also be made to the language of Proposed Rule 345-015-0310(11).

Finally, rules are needed to ensure that the public and reviewing agencies are provided with timely notice and access to any “additional information” submitted by applicants pursuant to Proposed Rules 345-015-0190(7) and 345-015-0310(11).

Sincerely,



Nathan Baker  
Senior Staff Attorney  
Friends of the Columbia Gorge

# Exhibit A

**Nathan Baker**

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**From:** JACKMAN Tom \* ODOE <tom.jackman@energy.oregon.gov>  
**Sent:** Friday, August 11, 2023 3:29 PM  
**To:** Nathan Baker  
**Cc:** CORNETT Todd \* ODOE  
**Subject:** RE: Energy Facility Siting Council Rulemaking - Proposed Amendment of Energy Facility Siting Application Process Rules  
**Attachments:** FW: Comments Requested on Proposed Amendment of Energy Facility Siting Application Process Rules

Nathan,

Thanks for bringing this to my attention. The website is a courtesy to the public and fortunately the statutorily required forms of notice, including the Secretary of State's bulletin, the notice sent to legislators, the email notice sent to those who are on the EFSC notice list (see, attached), and the paper notice sent to those who request it all had the correct date – August 18, 2023 at 5pm – for the end of the public comment period.

Given that all the legally required forms of notice had the correct date and time and given the overall lack of interest in this rulemaking, both from the RAC and via the public hearing (which was correctly dated everywhere, including the website), I am going to be recommending that Council move forward. However, I will bring this error to their attention and let them decide how they want to proceed.

Thanks again for letting me know about this.

Tom

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**From:** Nathan Baker <Nathan@gorgefriends.org>  
**Sent:** Wednesday, August 9, 2023 4:10 PM  
**To:** JACKMAN Tom \* ODOE <tom.jackman@energy.oregon.gov>  
**Subject:** Energy Facility Siting Council Rulemaking - Proposed Amendment of Energy Facility Siting Application Process Rules

You don't often get email from [nathan@gorgefriends.org](mailto:nathan@gorgefriends.org). [Learn why this is important](#)

Dear Mr. Jackman:

I am writing regarding the EFSC Rulemaking webpage at <https://www.oregon.gov/energy/get-involved/pages/energy-facility-siting-council-rulemaking.aspx>.

The first item listed on this page, "Proposed Amendment of Energy Facility Siting Application Process Rules," appears to indicate that this item was posted on June 30, 2023. It also indicates "All written comments must be received by 5:00 pm on June 23, 2023, to be considered." In other words, it appears that the stated comment deadline had already passed by the time the rulemaking item was posted. This appears to be in error.

As a result of the error, for the past five weeks that this posting has been on the EFSC webpage, anyone viewing it would have been misled into believing that it was too late to submit written comments. This may very well have frustrated and even precluded public participation in the rulemaking process.

Under the circumstances, and in order to allow for meaningful public participation and written comments, Friends of the Columbia Gorge requests the establishment and public announcement of a new deadline for written comments on this rulemaking.

Thank you very much.



**Nathan Baker**  
Senior Staff Attorney  
**Friends of the Columbia Gorge**

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Portland, OR 97232-2975  
[nathan@gorgefriends.org](mailto:nathan@gorgefriends.org)  
(503) 241-3762 x101

To: The Energy Facility Siting Council

From: Oregon & Southern Idaho District Council of Laborers, LIUNA Local 737

Subject: Comment on on Proposed Amendment of Energy Facility Siting Application Process Rules

The Oregon & Southern Idaho District Council of Laborers and LIUNA Local 737 collectively represent thousands of workers across the state of Oregon, primarily members who work as construction craft laborers. We are writing to express support for EFSC's rulemaking on EFSC's application process.

Because of the groundbreaking infrastructure investments passed at the federal level, it is crucial that Oregon is well-positioned to secure these funds. We applaud EFSC's work to examine the application process for energy facilities, and we are further supportive of attempts to clarify and simplify the procedures that currently exist. This rulemaking will help ensure that procedural inefficiencies do not harm the ability of our state to attract investment in renewable energy infrastructure.

HB 2021 from the 2021 legislative session was groundbreaking legislation in our state, and it ensures that the vast majority of utility scale renewable energy projects provide good jobs for workers. Any inefficiencies in EFSC's application processes harm workers, too; redundancies mean it takes longer to get workers on job sites, which harms workers and the families they support.

We appreciate the opportunity to provide comments, and are happy to engage as needed in the future to provide a perspective on rulemaking and EFSC processes from a labor and workforce perspective.

Jeff Gritz  
Business Manager, Secretary-Treasurer  
Oregon & Southern Idaho District Council of Laborers

Zack Culver  
Business Manager, Secretary-Treasurer  
LIUNA Local 737