



Oregon

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To: Oregon Energy Facility Siting Council

From: Thomas L. Jackman, Rules Coordinator

Date: February 9, 2023

Subject: Agenda Item C (Action Item) – Initiation of Amendment Rulemaking for the February 23, 2024 EFSC Meeting

STAFF RECOMMENDATION

Staff recommends that the Council initiate informal proceedings on the 2024 Amendment Rulemaking, which was approved for the 2024-2026 Rulemaking Schedule. Staff recommends that Council approve the scope and general direction of the rulemaking as outlined below. Staff also requests that the Council approve the creation of a Rulemaking Advisory Committee (RAC). Staff's recommended makeup of this RAC (by category) is discussed below. Please note that the Council is not being asked at this time to consider proposed rule amendments or the adoption of permanent rules.

BACKGROUND AND SUMMARY

As part of the 2024-2026 Rulemaking Schedule, the Council directed staff to prioritize work on the 2024 Amendment rulemaking. This rulemaking project is timely as a five-year review of a previous amendment rule revision is due at the beginning of 2025.

AMENDMENT RULEMAKING - SCOPE AND OBJECTIVES

The 2024 Amendment rulemaking is intended to evaluate the amendment process as currently outlined in Division 027 to achieve three main goals:

- 1) Improve the clarity of the rules by resolving ambiguities that have revealed themselves in the application of the rules as written.
- 2) Make substantive changes to improve Council's amendment process based on lessons learned since the last revision of the amendment rules.
- 3) Update the rules to ensure compliance with new statutes, revised rules, and recent direction of the courts.

The above three objectives are broad and overlap in many ways. What staff is proposing is a top-to-bottom review of the amendment rules to ensure that they are working in an optimal fashion, and that they are in compliance with statute, recent rule changes, and direction from the courts. This includes, among other things, rule language related to:

- partial retirement of a facility
- returning sites to a useful non-hazardous condition
- site changes that trigger an amendment process
- how an amendment type (i.e., A/B) is determined
- pre-amendment conference issues
- information applicants must submit in the preliminary request for an amendment

- notice requirements
- how the public comment period is structured
- properly raising issues with sufficient specificity to match changes to contested case rules
- contested case related issues generally
- ~~and so on~~ other issues identified by Council, staff or RAC members

~~Staff anticipates that RAC members and members of the public will raise additional areas of concern that can and should be addressed by this rulemaking.~~

Staff recommends the Council approve the scope of the Amendment rulemaking as outlined above.

RAC FORMATION

At this time, staff recommends the formation of a RAC, which will be relied upon to provide feedback from interested parties about the proposed modifications to the rules. Staff proposes a RAC consisting of 15 members:

- 2 – Investor-owned utilities
- 3 – Independent power producers and their representation
- 5 – Reviewing agencies (which includes the counties, state agencies, and the nine tribal governments)
- 3 – The public
- 2 – Resource interest groups and environmental justice groups

Staff will hold a minimum of two RAC meetings. However, given the potential interest and complexity of this rulemaking, more than two RAC meetings are likely.

Staff expects high interest in this rulemaking given the importance of amendment proceedings to the siting process.