

Mist Underground Natural Gas Storage Facility

Request for Amendment 13

Staff Report on Proposed Order

Attachment 2: Contested Case Requests

Name	Organization	Date Received
Daniel Schatz	Public	December 19, 2024
Samuel Semerjian	Public	December 19, 2024
Cole Souder	Green Energy Institute	December 20, 2024
Maria Gibson-Daugherty	American Aquifers	December 21, 2024

Contested Case Request and Document

From Daniel Schatz <danschatz@live.com>

Date Thu 12/19/2024 1:36 PM

To SLOAN Kathleen * ODOE <Kathleen.SLOAN@energy.oregon.gov>

 1 attachment (45 KB)

Daniel Schatz Am13 Contested Case (1).pdf;

Hi Kathleen,

I am submitting my request for a Contested Case regarding NW Natural's Amendment 13. I have attached the required document. Could you please send confirmation for receipt of the request.

Regards,
Daniel Schatz

Description:

Daniel Schatz

Danschatz@live.com

29071 Zimmerman Rd, Rainier Or 97048

I have a personal interest both economic and otherwise in seeking a contested case for this Amendment. My family and I own property including harvestable timber land, a home and ran a business outside of the Mist Natural Gas Field and Underground Storage Facility that we suspect has been contaminated by the operations at the site. We were forced to abandon our home and business because of the exposure at our home from the contamination. Our health has been severely impacted, we almost died and our now going to be dealing with the health impacts of this for the rest of our and our daughter's lives.

If this amendment is granted it will only worsen the already incredible environmental impact that we suspect is occurring from the Mist Gas Facility. The environmental impact caused by the construction and build out entailed in it will only increase the environmental damage that has been done and lead to more people in our community being exposed to deadly metals and chemicals. This will also negatively affect home values as no one wants to move to a community with environmental issues, see East Palestine, Ohio. My family invested a significant amount of money into our property and business and to lose everything, most importantly our health, is an injustice that should not be overlooked by the council.

No one can adequately represent the personal interest we have identified because we are the first ones to connect the dots and understand that something is seriously wrong in both Columbia and Clatsop Counties. We identified that there was an environmental contamination occurring then put in the time, work, money, and thought essentially our blood, sweat, tears, and treasure and figured out where the point of origin for the contamination is.

Issue #1- Geological Hazards Not Properly Assessed in Exhibit H: Geologic Hazard Evaluation (pFRA13)

Issue #2- Exhibit H is outdated according to updated USGS maps created in 2020.

Issue #3- Surficial Geology Not Properly Assessed in Exhibit H of pFRA13.

Issue #4- Groundwater Contamination Potential Due to Abandoned Wells.

I raised all 4 issues as a written document that was submitted before the Public Comment Hearing on September 19, 2024. I also gave verbal testimony at the Public Comment Hearing on September 19, 2024 that expounded and gave more personal insights than the submitted document.

Each of the issues raised was done so with an applicable law or EFS Council Standard.

Issue #1- OAR 345-022-00 (2)(b)(A), OAR 345-022-0030 (2), OAR 342-022-0020 (c)

Issue #2- Energy Facility Siting Council Standard #2 & #3

Issue #3- OAR 345-022-000 (2)(b)(A), OAR 345-022-0020 (c)

Issue #4- OAR 345-022-000 (2)(b)(A)

Issue 1 -

Issue #1- I contend the certificate holder does not meet OAR 345-022-0020, cited above, because they have not used the best available science that is currently available to make decisions regarding the facility.

Issue #2- I contend the certificate holder does not meet EFSC Standards #2 & 3 because the site is not suitable due to its location in the Cascadia Subduction Zone and the potential for loss from the field makes it dangerous for the environment and the community living in and around the field.

Issue #3- I contend the certificate holder does not meet OAR 345-022-0020 because they have failed to properly assess the surficial geology according to the newest and best available information when compared to the 2020 USGS geologic map.

Issue #4- I contend the certificate holder does not meet OAR 345-022-0020 because not only is the State of Oregon unaware of the total number of wells drilled, their status or where they are located but an email from DOGAMI suggests the majority of the wells plugged and abandoned at the field were done so in a manner that would increase the potential for groundwater contamination.

Issue #1- Verbal & Written September 19, 2024

Issue #2- Verbal & Written September 19, 2024

Issue #3- Verbal & Written September 19, 2024

Issue #4- Verbal & Written September 19, 2024

Concerns are being brought before the council by citizens living in and around the Mist Natural Gas Field and Underground Storage Facility. Those concerns should be treated with all seriousness and should not be easily pushed aside. Not only have we provided evidence that shows NW Natural is not capable of adequately describing their site but that they are using old and outdated information in an attempt to push this amendment through. Most importantly we raised issue with parts of the amendment that do not comply with Oregon or DOE law and should be reviewed with all thoroughness'.

Issue 2

Issue #1- The best available science has not been applied to adequately evaluate the geologic hazards and risks associated with the Mist Gas Field. The Mist Gas Field is located in an extremely active location where velocity data shows significant rotation occurring beneath the field.

Issue #2- Exhibit H should be considered outdated information. There are more up to date maps including a 2020 USGS map that fall within the boundary of the Site Certificate but was not used even though it was available at the time.

Issue #3- The Mist Gas Field has been operating outside of the conditions listed in OAR 345-022-0020 by not properly identifying potential geological hazards. Instead of showing the complexity that truly dominates the field, older and simpler maps were utilized to create the amendment.

Issue #4- There is tremendous uncertainty at the field regarding the number of wells and their condition and status. The State of Oregon is not even aware of that information. There is also a question of whether the majority of the plugged and abandoned wells were done so in a way that will lead to environmental contamination.

Issue #1- Verbal & Written September 19, 2024

Issue #2- Verbal & Written September 19, 2024

Issue #3- Verbal & Written September 19, 2024

Issue #4- Verbal & Written September 19, 2024


The council should make the determination that each issue raised should justify a contested case because of the facts that were presented here and in the written portion of my testimony. It is evident that NW Natural is not able to operate the field in a manner consistent with the requirements of the State of Oregon. Therefore the council should allow the contested case hearing to proceed on these issues.

Amendment 13 - Contest Case

From Eleonora Kostanian-Semerjian <semerjians@gmail.com>

Date Thu 12/19/2024 11:45 PM

To SLOAN Kathleen * ODOE <kathleen.sloan@energy.oregon.gov>

 1 attachment (44 KB)

DOE Contested .pdf;

I would like to request a contest to the Mist Underground Natural Gas Storage Facility Amendment 13.

Attached is my document for submission for contesting.

Sincerely

- Samuel Semerjian

In our initial submission for public comment for Amendment 13, an integral subject was not addressed. We raised the issue of impartiality of DOGAMI, Haley-Aldrich, the EPA and Columbia County. The input of these institutions are the basis of decision making for this project. Thus far no effort is being made to address the undue influence between these institutions, which from our perception could be considered a conflict of interest. As such we would like paragraph four of our initial comment to be answered.

Para. 4. "Currently the Amendment 13 application with DOE is using DOGAMI and Haley-Aldrich to present the environmental assessment of the application.

DOGAMI has a very biased record in this subject. Bob Houston, a previous manager of DOGAMI, now works for Knife River. He was heavily involved in getting Knife River to continue operations in Crook County despite the catastrophic water issues for the locals there. Current DOGAMI board member Tiffany Thomas is an employee of Haley-Aldrich. Previous board member Laura Maffei worked for Cable Huston law firm that also represents Enerfin Resources. Randy L. Jordan did work for DOGAMI and last year joined Haley-Aldrich. Can impartiality be met with so many DOGAMI employees essentially representing mining companies, is it even possible to get an unbiased and independent environmental assessment?"

On September 19th, mere hours before public comment ended for Amend.13, I received an email from Nina Carlson, PR person for NWN responding to our concerns during a meeting we had in June. In which we were essentially told that Amend.13 was ONLY for replacing end of life equipment, which is simply not true. Besides the typical greenwashing of our questions one cannot help but conclude the timing of this email was done to maintain the half truth of timely responses. It is no wonder they are being sued for deception. Even our local fire department cannot maintain unbiased neutrality. Mist-Birkenfeld RFPD was the only one who wrote a letter of support for Amend.13 and this was done purely because they receive a monetary stipend from Northwest Natural. DOE, EPA, DOGAMI, Columbia County, DEQ none of these are behaving in a way to deserve public trust.

Northwest Natural is going from injecting 245 MMSCFD in 1999 to 835 MMSCFD using 8,200 BHP compressors in a land area that is ultimately zoned Primary Forest. Fracked gas from Canada is to be injected into the ground where we live. The fact is that there is no agency that has physically investigated or done any tests to find out the environmental impact and risks of this activity since it was introduced in the 1980s. The people who live here deserve to know the unbiased truth of our environment from industrial activity. If the powers that be are unwilling to look into this matter then we and other citizens will look into independently getting an independent assessment of the environment. Until this is accomplished gas operations should not be approved or expanded.

Contested Case Request for Mist Underground Natural Gas Storage Facility RFA 13

From Cole T. Souder <csouder@lclark.edu>

Date Fri 12/20/2024 1:14 PM

To SLOAN Kathleen * ODOE <kathleen.sloan@energy.oregon.gov>

 1 attachment (204 KB)

GEI Request for Contested Case for Mist Facility RFA 13.pdf;

Hello Ms. Sloan,

Attached is a request for a contested case regarding RFA 13 for the Mist Underground Natural Gas Storage Facility.

Happy Holidays!

Cole Souder, J.D.

He/Him/His

Staff Attorney - Green Energy Institute

Lewis and Clark Law School

503-768-8955 (office)

925-330-3245 (cell)

csouder@lclark.edu

BEFORE THE ENERGY FACILITY SITING COUNCIL
OF THE STATE OF OREGON

In the matter of the Request for
Amendment 13 of the Site Certificate for
the MIST UNDERGROUND NATURAL
GAS STORAGE FACILITY

**GREEN ENERGY INSTITUTE
AT LEWIS & CLARK LAW
SCHOOL REQUEST FOR A
CONTESTED CASE
PROCEEDING**

I. INTRODUCTION

Pursuant to OAR 345-027-0371(6), the Green Energy Institute at Lewis & Clark Law School (“GEI” or “Requester”) requests that the Energy Facility Siting Council (the “Council”) conduct a contested case proceeding on Request for Amendment 13 of the Site Certificate (“Amendment 13”) for the Mist Underground Natural Gas Storage Facility (“Mist Facility”) and allow GEI to participate as a party in the proceeding.

Northwest Natural owns the Mist Facility, which initially received a site certificate in 1981. The Mist Facility is unique among the facilities under EFSC jurisdiction, as it is the only “surface facility related to an underground gas storage reservoir.” *See* ORS 469.300(12)(a)(I). Since 2018, the last time the Council approved an amendment to the Mist Facility Site Certificate, several changes to Oregon law and policy have occurred that warrant the Council to make a finding of need before granting Amendment 13.

In accordance with ORS 469.501(1)(L), the Council adopted a Need Standard for “nongenerating facilities,” as defined in ORS 469.503. “Nongenerating facilities” are any one of six types of “energy facilities” set out in ORS 469.300(12)(a)—high voltage transmission lines, pipelines that meet certain criteria, synthetic fuel plants, biomass fuel plants, storage facilities for liquified natural gas, and surface facilities related to an underground gas storage reservoir. *See* ORS 469.300(12)(a)(C), (E)–(I). The Council last amended its Need Standard in 1999, save for a

REQUEST FOR CONTESTED CASE

few cosmetic alterations. See EFSC 2-1999 (Feb 26, 1999). Because the Council has adopted a Need Standard, that standard, as well as any exceptions to the standard, must be “consistent with the state energy policy set forth in ORS 469.010 and 469.310.” ORS 469.501(1)(L), (2).

In the Proposed Order, ODOE staff incorrectly interpreted OAR 345-023-0005 (referred to hereinafter as the “Facility Need Rule” to distinguish OAR 345-023-0005 from a “need standard” that may be applied to a Site Certificate amendment). The Facility Need Rule requires the Council to make a finding of need for three types of nongenerating facilities, then states that the “Council may adopt need standards for other nongenerating facilities.” OAR 345-023-0005. The Mist Facility is one such “other” nongenerating facility. ODOE staff interpreted the Facility Need Rule as requiring a rulemaking before the Council can apply a need standard to “other nongenerating facilities” and, consequently, advised the Council against making a finding of need before granting Amendment 13.

Requester raises two issues in response to ODOE’s conclusions. First, applying Oregon’s rules of regulatory interpretation, the Facility Need Rule gives the Council the authority to apply a need standard to “other nongenerating facilities” outside of a rulemaking. ODOE’s interpretation functionally omits the statement granting the Council the authority to “adopt need standards for other nongenerating facilities” from the Facility Need Rule in a manner that is inconsistent with the text and context of OAR 345-023-0005, with EFSC’s governing statutes, with Oregon Supreme Court precedent, and, arguably, with the regulation’s history. Second, in light of recent changes to the legal and regulatory landscape governing Oregon’s energy future as efforts to combat climate change are implemented, the Council should exercise its authority to apply a need standard here and require Northwest Natural to demonstrate need before the Council grants Amendment 13.

The Council should allow a contested case because the issues raised necessitate a determination of the Council's legal authority and obligations that is best managed by a neutral decisionmaker. These issues warrant a contested case because they are likely to affect the Council's determination of whether to grant or deny Amendment 13.

II. IDENTIFICATION OF REQUESTER

A. Green Energy Institute

GEI is a nonprofit energy and climate law and policy institute within Lewis & Clark's top-ranked environmental, natural resources, and energy law program. GEI advocates for decarbonization policy in Oregon and the transition away from fossil fuels in the state's energy systems and buildings. As a part of that work, GEI also advocates for fair energy prices for residential customers, particularly low-income customers who face high energy burdens.

III. REQUESTER'S CONTACT INFORMATION

Attn: Cole Souder
Green Energy Institute at Lewis & Clark Law School
10101 S. Terwilliger Blvd.
Portland, OR 97219
(503) 768-6955
csouder@lclark.edu

IV. REQUESTER'S ATTORNEY

Cole Souder
Green Energy Institute at Lewis & Clark Law School
10101 S. Terwilliger Blvd.
Portland, OR 97219
(503) 768-6955
csouder@lclark.edu

V. REQUEST TO PARTICIPATE AS A PARTY

GEI requests to participate as a party to the contested case.

VI. REQUESTER'S INTERESTS IN THE PROCEEDING

Requester is a nonprofit public interest organization whose individual mission, *see* Part II, centers on protecting the environment, combating climate change, and transitioning to a green energy future. Requester engages at a variety of governmental levels in Oregon to ensure that state laws are followed to protect the environmental health of the region and meet its climate goals. Requester's mission, prior advocacy on this issue as shown by its comment on the record, and extensive experience representing the public interest in environmental and energy issues evidence its qualification to represent the public interest here.

Requester's interest in this proceeding is to ensure that Amendment 13 is not approved until Northwest Natural and the Council have addressed and analyzed every aspect of Amendment 13 as required by law and the Council's regulations in the context of evolving statewide energy and environmental policies. Requester also has an interest in preventing the construction of unnecessary utility assets, the costs of which will be passed down to ratepayers for whom the project will deliver no material benefit.

These public interests would be adversely harmed if the Council wrongly interprets its own regulations and approves Amendment 13 without first determining that the expansion to the Mist Facility is needed. Approval of the project may expose the state to the environmental, health, and economic harms concurrent with the expansion of natural gas infrastructure. The Council's dismissal of Division 23's applicability on the grounds cited in the Proposed Order will also harm Requester's continued interest in the proper application of Oregon's laws by government agencies and the protection of Oregon's environmental and energy policies that favor decarbonization. Without a needs analysis, the Council is acting blindly about whether, in fact, the project is consistent with Oregon's energy future.

Requester is the only group that can adequately represent these interests, as no other group, besides the other public interest groups that joined GEI's comment, raised the same issues on the record at the September 19, 2024, public hearing on the Draft Proposed Order. As such, no other party could represent Requester's interest in the application of the Council's Facility Need Rule to Amendment 13.

VII. THE ISSUES PREVIOUSLY RAISED JUSTIFY A CONTESTED CASE

When evaluating an amendment to a site certificate, the Council must ensure that "the facility, with the proposed change, complies with the applicable laws or Council standards that protect a resource of interest that could be affected by the proposed change." OAR 345-027-0375. One such Council standard is OAR 345-023-0005 which states:

"This division applies to nongenerating facilities as defined in ORS 469.503(2)(e), except nongenerating facilities that are related or supporting facilities. To issue a site certificate for a facility described in sections (1) through (3), the Council must find that the applicant has demonstrated the need for the facility. *The Council may adopt need standards for other nongenerating facilities.* In accordance with ORS 469.501(1)(L), the Council has no standard requiring a showing of need or cost-effectiveness for generating facilities."

OAR 345-023-0005 (emphasis added).

The Council should not approve Amendment 13 until it first assigns a need standard and requires Northwest Natural to meet that standard. The statement in OAR 345-023-0005—that the "Council may adopt need standards for other nongenerating facilities"—provides the Council the authority to apply a need standard to a surface facility related to an underground gas reservoir like the Mist Facility without going through the process of formal rulemaking. The Council should exercise that authority here because Oregon's energy policy demands the rapid decarbonization of the state's economy, which calls into question whether the expansion of a fossil fuel-based facility is needed.

A. The Council does not have to perform a formal rulemaking to apply a need standard to Amendment 13.

The Council has the current authority to apply a need standard to “other nongenerating facilities,” which include surface facilities related to an underground gas reservoir. To give full effect to OAR 345-023-0005, the sentence “[t]he Council may adopt need standards for other nongenerating facilities” must be read to mean that the Council may adopt and apply a need standard while reviewing an amendment to a site certificate. Interpreting the Facility Need Rule to require a rulemaking before a need standard can be applied to “other nongenerating facilities,” gives that sentence no meaning, effectively removing it from the regulation. Such an interpretation is contrary to rules of regulatory interpretation required by Oregon law.

ODOE staff has wrongly advised the Council that a rulemaking would be required before a need standard could be applied. The Proposed Order concluded that the Council should “continue to find that the [Facility Need Rule] does not apply to [Amendment 13].” Proposed Order at 188. ODOE staff explained their reasoning during the public meeting held on October 25, 2024, where they stated that “the Department agrees with certificate holder that EFSC could not apply a need standard as requested by the commenters unless it first engaged in formal rulemaking to adopt such a standard.” EFSC Meeting Power Point, OR. DEP’T OF ENERGY 55 (October 25, 2024), available at <https://www.oregon.gov/energy/facilities-safety/facilities/Council%20Meetings/2024-10-25-EFSC-Combined-PowerPoint.pdf>.

Contrary to ODOE staff’s representation, the structure of OAR 345-023-0005 establishes the Council’s authority to apply a need standard here. The standard begins by establishing the scope of the rule: it applies to nongenerating facilities as defined in ORS 469.503. *See* OAR 345-023-0005. There are six such types of facilities. *See* ORS 469.503(2)(f); ORS 469.300(12)(a)(C), (E)–(I). The regulation then states that, for three types of nongenerating facilities—high voltage

transmission lines, natural gas pipelines, and storage facilities for liquified natural gas—the Council *must* make a finding of need before approving an application for or amendment to a site certificate. For each of these facility types, the applicant gets to choose between two possible need standards, depending on the type of nongenerating facility for which the applicant seeks a certificate. OAR 345-021-0010(1)(n); OAR 345-023-0005(1)–(3). The rule then continues to the sentence in question: “The Council may adopt need standards for other nongenerating facilities.” OAR 345-023-0005. The rule is best understood from the perspective of the applicant: for three types of nongenerating facilities, the applicant *must* demonstrate need, using one of the applicable standards articulated later in the rule. An applicant of an “other” nongenerating facility, though, *may* be required to demonstrate need if the Council adopts a standard for their specific application.

The only interpretation that gives the sentence a function in the context of the rest of the Facility Need Rule is that the Council may adopt such an ad hoc need standard for other nongenerating facilities. Under ODOE’s interpretation, the sentence is understood to say that, if the Council wants to apply a need standard to “other nongenerating facilities” it must first amend OAR 345-023-0005. But the Council’s authority to amend its regulations comes not from the regulations themselves, but rather from statute. *See* ORS 469.470(2) (granting the Council authority to adopt rules to fulfill its legal purposes subject to the Administrative Procedures Act); ORS 183.310(9) (defining “rule” as including the amendment to a rule for the purposes of the Administrative Procedures Act). An interpretation that gives the Council an authority it already possesses would functionally omit the sentence from the regulation. Such an interpretation would be contrary to Oregon law. ORS 174.010 (“In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms of substance, contained therein, not to insert

what has been omitted, or to omitted what has been inserted.”); *see also*, *Abu-Adas v. Employment Dep’t Food Empls.*, 325 Or 480, 485 (1997) (“In determine the meaning of an administrative rule, the court’s role is the same as its role in determining the meaning of a statute.”).

Requester’s interpretation is also consistent with recent Oregon Supreme Court precedent. In *Stop B2H Coalition v. Dept. of Energy*, the Court found that a rulemaking was not required to modify a requirement for a site certificate where the underlying rules gave the agency the authority to waive or modify certain requirements:

“When a rule expressly authorizes an agency to modify a condition to address a specific case, the modification is not an amendment of the rule. A rule is an agency directive of general applicability. An agency action directed to a specific person or entity is not a generally applicable rule. Here, ODOE’s modification of the [requirement] applied only to the site certificate for this specific proposed transmission line. That modification is not a rule of general applicability that would apply to other projects. Thus, rulemaking was not required.”

370 Or 792, 810, 525 P3d 864 (2023) (cleaned up and citations omitted). Here, the sentence in question gives the Council the authority to modify the Facility Need Rule to apply need standards to “other nongenerating facilities.” That modification would not be a rule of general applicability, but rather would apply only to the specific project under review. Because the modification of the site certification requirement (a showing of need) would not be generally applicable, and instead would only apply to Amendment 13, a rulemaking would not be required.

In its response to Requester’s comment, Northwest Natural cited to *Burke v. Public Welfare Division*, 31 Or App 161, 570 P2d 87 (1977) for the proposition that a rulemaking would be required to apply a need standard to Amendment 13. “Response to Public Comments and Energy Facility Council Members,” Comment ID 24-299, at 2 (Sept. 27, 2024). *Burke*, however, involved a generally applicable standard published in a Food Stamp Manual, rather than a modification of the requirements for a specific applicant made pursuant to a grant of authority to

modify such requirements. *Burke*, 31 Or App at 163. Because this issue involves a potential modification made to the requirements applied to a specific application, *Stop B2H Coalition* is more directly applicable and establishes that the Council is not required to engage in formal rulemaking to apply a need standard to Amendment 13.

Requester raised this issue on pages 4–6 of its comment on the record for the September 19, 2024, public meeting. The issue was raised with specificity in the last full paragraph on page 5 of the comment. A contested case is justified because the issue raises a significant question of law that may affect the Council’s determination of whether the Facility Need Rule applies to Amendment 13, whether Northwest Natural must make a showing of need for the changes to the Mist Facility, whether the facility complies with all applicable laws and rules, and by extension whether the Council should grant Amendment 13.

B. The Council should exercise its authority to apply a need standard.

Several recent changes to the laws and regulations governing Oregon’s energy policy justify the application of a need standard to Amendment 13. These laws, regulations, and regulatory actions call for the rapid decarbonization of Oregon’s economy, from electricity generation to industrial processes to the ways we heat our buildings, and foreshadow a reduction in demand for natural gas. If approved, Amendment 13’s changes would further develop the North Mist Compressor Station, which is used to provide natural gas storage for Portland General Electric’s (“PGE”) Port Westward electricity generation plants, and upgrade facilities at the Miller Station Facility. Given the evolution of Oregon’s energy policy and its outlook for natural gas usage in the state, the Council should apply a need standard and require Northwest Natural to establish that an expansion to the Mist Facility is needed before it grants Amendment 13.

Executive Order 20-04 established statewide greenhouse gas emission reduction goals of 45 percent by 2035 and 80 percent by 2050 (compared to a 1990 baseline). Or. Exec. Order 20-04, at 5 (Mar. 10, 2020). It also directs certain state agencies, including ODOE, the Oregon Public Utility Commission (“PUC”), and the Oregon Department of Environmental Quality (“DEQ”)—Northwest Natural’s main regulators in Oregon—to “exercise any and all authority and discretion vested in them by law to help facilitate Oregon’s achievement” of those greenhouse gas emissions reduction goals. *Id.* at 5.

HB 3630 requires ODOE to “develop a comprehensive energy strategy that identifies and optimizes pathways to achieving state energy policy objectives.” ORS 469.062. Those energy policy objectives include Executive Order 20-04 as well as HB 2021 and the Climate Protection Plan, discussed below. Although the energy strategy has not been released, ODOE has released its final reference scenario—essentially the inputs that will drive the modeling that develops the strategy. Those assumptions paint a picture of widespread electrification and decarbonization of residential, commercial, and industrial spaces, as well as transportation and electricity generation. Oregon Energy Strategy Reference Scenario — Key Data and Assumptions, OR. DEP’T OF ENERGY 4 (Sept. 24, 2024), available at <https://www.oregon.gov/energy/Data-and-Reports/Documents/OES-Final-Reference-Scenario-9-24-2024.pdf>.

HB 2021 requires Oregon’s two main investor-owned utilities, PGE and Pacific Power, to reduce emissions 80 percent by 2030, 90 percent by 2035, and 100 percent by 2040. ORS 469A.410. To meet those targets, the utilities will have to transition away from fossil fuel electricity generation, including generation from burning natural gas. As noted above, the changes to the Mist Facility Amendment 13 call for the expansion of the North Mist facility, where gas is stored for use at the Port Westward gas generation facilities that PGE owns. As a

result, Amendment 13 calls for the expansion of a facility that serves an end-use that, under Oregon law, will need to be largely phased out in the next decade.

In November 2024, DEQ reinstated the Climate Protection Program (“CPP”), which caps and then reduces the greenhouse gas emissions of certain entities from, among other fossil fuels, natural gas. The CPP is designed to reduce emissions from covered entities 50 percent by 2035 and 90 percent by 2050. Climate Protection Program 2024, OR. DEP’T OF ENVTL. QUAL., available at <https://www.oregon.gov/deq/rulemaking/Pages/CPP2024.aspx>. The CPP covers both fuel suppliers and stationary sources, including Northwest Natural. To meet its obligations under the CPP, Northwest Natural is considering non-pipeline alternatives to lower natural gas demand, including combining furnaces with heat pumps, efficiency measures like thermostat controls, and offering industrial customers interruptible rates. Northwest Natural, “LC 79 – NW Natural’s 2022 Integrated Resource Plan Update No. 2,” at 12, 15, 21 (Aug. 21, 2024), available at <https://edocs.puc.state.or.us/efdocs/HAH/lc79hah330876025.pdf>. The PUC also recently upheld its decision phasing out Northwest Natural’s line-extension allowance, which will make connecting to the natural gas system more expensive for potential new customers, likely limiting its customer growth in future years. Order 24-359, OR. PUB. UTIL. COMM’N. 10 (Oct 25, 2024), available at <https://apps.puc.state.or.us/orders/2024ords/24-359.pdf>.

Taken as a whole, Oregon’s laws, regulations, and administrative orders establish a clear statewide energy policy of decarbonization, both in terms of energy use in buildings as well as the generation of electricity. At a minimum, the laws, regulations, and agency decisions discussed above undercut the expectation that Northwest Natural will need *more* storage capacity than currently available at the Mist Facility in the near future. Pursuant to ORS 469.501, the Council’s Facility Need should be applied in a manner consistent with Oregon’s energy policy.

To prevent inconsistency with the laws and regulations discussed above, the Council should exercise its authority to apply a need standard and require Northwest Natural to demonstrate need for the changes to the Mist Facility before granting Amendment 13.

Requester raised this issue on pages 2, 3, 5, and 6 of its comment submitted on the record. A contested case is justified because the issue raises significant questions of fact and law that may affect the Council's determination of whether Amendment 13 complies with applicable laws and rules and whether the amendment can be granted before a need analysis is performed.

VIII. CONCLUSION

For the reasons stated above, the Green Energy Institute at Lewis & Clark Law School requests that the Energy Facility Siting Council conduct a contested case proceeding on the Request for Amendment 13 of the Site Certificate of the Mist Underground Natural Gas Storage Facility and admit Requester as a party to the proceeding.

Dated this 20th day of December, 2024.

Respectfully submitted

GREEN ENERGY INSTITUTE AT LEWIS &
CLARK LAW SCHOOL

/s/ Cole Souder

Cole Souder, OSB No. 243874

Attorney for Green Energy Institute

Request Contested Case on Mist Underground Natural Gas Storage Facility Request for Amendment 13

From Maria Daugherty <m.daugherty@americanaquifers.org>

Date Sat 12/21/2024 4:00 PM

To SLOAN Kathleen * ODOE <Kathleen.SLOAN@energy.oregon.gov>

Cc ESTERSON Sarah * ODOE <Sarah.ESTERSON@energy.oregon.gov>

 2 attachments (1 MB)

pFRA13_Contested_Case_Request_American_Aquifers_Signed.pdf; MSTAMD13 Public Notice on Proposed Order and Contested Case 2024-11-21.pdf;

Hello Kathleen,

Please see the attached pdf with American Aquifer's Request for a Contested Case of FRA13.

Thank you,

Maria Daugherty, PhD

President

AmericanAquifers.org

M.daugherty@americanaquifers.org

"Do unto those downstream as you would have those upstream do unto you." -Wendel Berry

On Nov 21, 2024, at 2:19 PM, SLOAN Kathleen * ODOE <Kathleen.SLOAN@energy.oregon.gov> wrote:

You are receiving this email because you commented on the record of the Draft Proposed Order for the Request for Amendment 13 for the Mist Underground Natural Gas Storage Facility.

The Proposed Order and Public Notice are available on the project webpage via the links below.

A copy of the Public Notice on the Proposed Order and Opportunity to Request a Contested Case is also attached as a PDF to this email.

Click [here](#) if you are having trouble viewing this message.



American Aquifers - Every Drop Counts
Public CommentpRFA
- Mist Underground Natural Gas Storage Field

12/21/2024

American Aquifer's Request for Contested Case of Amendment 13 (RFA13)

Requestor Name: Maria Daugherty, PhD - authorized representative of American Aquifers

Requestor Address: 625 Virginia Ave. STE #18
Coos Bay, OR 97420

Name of Organization: American Aquifers

Party Status Requested: Full Party

Representing Public Interest:

American Aquifers, a non-profit organization and 501c3, supports and advocates for communities and citizens impacted by poor groundwater conditions, including water quality and quantity. American Aquifers works with a network of groundwater experts in Oregon and throughout the United States. Dr. Daugherty, representing American Aquifers in this contested case, holds a PhD in Water Resources Science, specializing in hydrogeology, from Oregon State University.

American Aquifers has determined the Oregon Department of Energy (Department) does not adequately represent public interest, as the Proposed Order does not meet guidelines described in OAR 345-027-0367, nor did the Proposed Order properly address American Aquifer's concerns, written by the Department's third-party consultant with regard to OAR 345-022-000 (2)(b)(A); OAR 345-024-0030 (2); OAR 345-022-0020(c).

Issue 1

Issue Statement: The draft proposed order process violated under Oregon Administrative Rule (OAR) 345-027-0367 (7). The OAR states:

*Following the **close of the record of the public hearing on the draft proposed order**, the Council must review the draft proposed order, must consider all comments received on the record of the hearing, and **may provide comments to the Department** regarding the draft proposed order. When the Council meets to review a draft proposed order, the Council may not permit the certificate holder, reviewing agencies, or the public to comment on any issue that may be the basis for a contested case request.*

Issue of Fact 1:

The record of the public hearing closed on October 25, 2024. The Department's third-party consultant submitted a response to American Aquifer's written public comment dated 9/19/24, and in the DPO after the close of the hearing, which is in violation of OAR 345-027-0367 (7).

As stated in the above OAR, *the Council must review the draft proposed order, must consider all comments received on the record of the hearing, and may provide comments to the Department regarding the draft proposed order.* Submittal of Haley-Aldrich's technical memorandum hired by the Department, was submitted after the close of the record of the DPO hearing on October 25, 2024. Additionally, the OAR allows for the Council to provide comments to the Department but does not allow the Department to provide comments to the Council after the close date. Although the Council received preliminary comments from Haley-Aldrich during the Council meeting on October 25, 2024, their official memorandum was not submitted until November 7th (DPO, Technical Memorandum in Response to American Aquifers Comments, p. 463).

Therefore, we request a contested case under this issue as the response by the Department was dated November 7, 2024, thirteen days after the close of the DPO hearing, and should not have been included for review by the Council.



Issue of Fact 2:

A conflict of interest exists between DOGAMI, the Department, and Haley-Aldrich, which demonstrates recommendations by these entities inadequately represent public interest.

According to Haley-Aldrich's evaluation described in their technical memorandum,

*"OAR 45-021-0010(1)(h)(B) requires that a certificate holder consult with the **Department of Geology and Mineral Industries (DOGAMI)** on the appropriate methodology and scope of the seismic hazards and geology and soil-related hazards assessment, and the appropriate site-specific geotechnical work that must be done to adequately characterize the site, to inform a design that protects public health and safety, and environmental risks from seismic and non-seismic hazards. NW Natural completed this consultation with DOGAMI and ODOE, and provided evidence of the discussion and DOGAMI's concurrence in RFA13 Exhibit H Attachment H-1."*

American Aquifer requests a contested case, since DOGAMI and the Department (stated as ODOE above) both consulted on the DPO and supports approval of amendment 13. The Department's third-party consultant, Haley-Aldrich, employs Dr. Tiffany Thomas, which also sits on the governing board of DOGAMI. A conflict of interest between Haley-Aldrich, the Department, and DOGAMI, is brought to the Council's attention in this contented request since the DPO contains a technical memorandum in response to American Aquifer's written public comment submitted 9/19/24. American Aquifer finds Haley-Aldrich did not adequately respond to the below OAR's or American Aquifers' concerns related to:

OAR 345-022-000 (2)(b)(A): (2) The Council shall weigh overall public benefits and any adverse effects on a resource or interest as follows: (b) The Council shall evaluate overall public benefits by considering factors including, but not limited to, the following: (A) The overall environmental effects of the facility, considering both beneficial and adverse environmental effect.

OAR 345-024-0030 (2): The applicant has developed a program using technology that is both practicable and reliable to monitor the facility to ensure the public health and safety.

OAR 345-022-0020(c): The applicant, through appropriate site-specific study, has adequately characterized the potential geological and soils hazards of the site and its vicinity that could, in the absence of a seismic event, adversely affect, or be aggravated by, the construction and operation of the proposed facility; and (d) The applicant can design, engineer and construct the facility to avoid dangers to human safety and the environment presented by the hazards identified in subsection

Therefore, American Aquifers requests a contested case as DOGAMI and the Department are not representing public interest due to the unethical conflict of interest amongst the Department, DOGAMI, and Haley-Aldrich, as the technical memorandum contains biased responses.

Maria Daugherty, PhD
President
American Aquifers
12/21/2024