



Oregon

Tina Kotek, Governor



550 Capitol St. NE
Salem, OR 97301
Phone: 503-378-4040
Toll Free: 1-800-221-8035
FAX: 503-373-7806
www.oregon.gov/energy

To: Energy Facility Siting Council

From: Kathleen Sloan, Senior Siting Analyst

Date: January 10, 2025 (revised from January 3, 2025 Staff Report)

Subject: Agenda Item C (Action Item): Mist Underground Natural Gas Storage Facility, Request for Amendment 13 – Council Review of Requests for Contested Case and Possible Adoption of Final Order, for the January 17, 2025 EFSC Meeting

Attachments: Attachment 1: Proposed Order on Request for Amendment 13
Attachment 2: Requests for Contested Case
Attachment 3: 1999 EFSC Staff Report on Proposed Rule Changes

Note to Reader: Revisions made to Jan 3, 2025 Staff Report are provided in track-changes

RECOMMENDED COUNCIL ACTION

1. Contested Case Requests - Staff recommends that Council find that none of the requests received identify a properly raised issue that justifies a contested case proceeding.
2. Proposed Order - Staff recommends that Council adopt the Proposed Order as the Final Order, and issue an amended site certificate, subject to the findings, conclusions, and conditions of approval in the Proposed Order.

BACKGROUND

Mist Underground Natural Gas Storage Facility (facility) is an operational energy facility. The facility consists of surface facilities to underground natural gas storage reservoirs including compressor stations, gathering pipelines, operations and maintenance facilities, and a gas transmission pipeline. The permitted storage area is approximately 5,472 acres; the permitted daily natural gas throughput is 635 million standard cubic feet. The site boundary is in Columbia County. Northwest Natural Gas Company is the certificate holder.

In request for Amendment 13, the certificate holder seeks authorization to amend the site certificate to construct and operate pipelines at four undeveloped reservoirs; three new natural-gas fired compressors; two replacement natural-gas fired compressors; underground collector line; control and operations building; three temporary laydown areas and one permanent laydown/storage area.

Procedural History

- March 15, 2024 – Certificate holder submitted preliminary Request for Amendment 13 (pRFA13).
- May 9, 2024 – Department determined pRFA13 to be incomplete and issued the first of three requests for additional information.
- August 1, 2024 – Department determined pRFA13 to be complete.
- August 9, 2024 – Certificate holder filed complete Request for Amendment 13 (RFA13).
- August 15, 2024 – Department issued the Draft Proposed Order (DPO) recommending the Council approve RFA13 and the Public Notice of the DPO which initiated a 36-day public comment period on RFA13 and the DPO, extending through September 19, 2024.
- September 19, 2024 – EFSC held DPO public hearing in Clatskanie.
- October 25, 2024 – Council reviewed the DPO, comments received on the DPO, certificate holder responses to comments and the Department’s preliminary evaluation of those comments.
- November 21, 2024 – Department issued its Proposed Order recommending the Council approve RFA13, with amended recommended findings of fact and conditions of approval based on the Department’s consideration of timely comments on the DPO, certificate holder responses to comments, comments provided by the Council during its review of the DPO, and additional evidence received on the record. A Public Notice of the Proposed Order and Opportunity to Request a Contested Case was issued on the same day.
- December 21, 2024 – Deadline to received requests for a contested case. Four requests were received prior to the deadline.

STAFF EVALUATION OF AMENDMENT REQUEST AND PROPOSED ORDER

The Proposed Order recommends Council find that a preponderance of evidence on the record supports the conclusions that the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate; and, the facility, with the proposed RFA13 changes, complies with the applicable laws or Council standards that protect a resource or interest that could be affected by the proposed change, subject to recommended conditions; and that the Council approve RFA13, subject to existing and recommended new and amended conditions.

All changes from the DPO are shown in the Proposed Order in underline/strikethrough format. The Department addressed comments with additional findings of fact but did not make any recommended material changes. Material changes, if any, would include substantive changes to conditions of approval, an action, or recommendation or a reversal of an action or recommendation. Material changes would not include updated or revised findings of fact unrelated to a change in a condition. The Department’s evaluation of comments received and Department’s responses to comments are presented in Table A-1 and summarized in the Proposed Order (See Section II.B.2 p. 20-29).

Non-material changes to information and findings of fact in response to comments were made to the following sections in the Proposed Order:

- Approved Facility Description (Section I.B, p. 6)
- Structural Standard (Section III.C, p. 41-42, 47)
- Public Services Standard (Section III.M, p. 164-165)
- Need for Nongenerating Facilities (Section IV.A, p. 188)

- Public Health and Safety Standards for Surface Facilities Related to Underground Gas Storage Reservoirs (Section IV.B, p. 188-189)
- Standard for Nongenerating Facilities (Section IV.D, p. 191-195)
- Means of Compliance for Nongenerating Facilities (Section IV.E, p. 195-200)
- Removal Fill (Section V.B, p. 210, 216)

Minor edits were made to the following site certificate conditions for clarification purposes, but those changes are not considered to be material changes.

- Recommended Retirement and Financial Assurance Condition 1 [PRE]: to add language that the condition applies prior to any phase of construction (Section III.G, p. 111-112).
- Recommended Public Services Condition 2 [PRE]: to add Mist-Birkenfeld Rural Fire Protection District (RFPD) in addition to Clatskanie RFPD re: sharing the costs of the upgrade to the hydraulic pump system at Fleming Pond (Section III.M, p.164-165).
- Recommended Carbon Dioxide (CO₂) Emissions Condition 2 [PRE] and Recommended Carbon Dioxide Emissions Condition 3 [OPR]: update the CO₂ offset rate to reflect recent changes by Council from \$4.27 to \$6.40 per ton of CO₂ (Section IV.E, p. 198-200).
- Recommended Removal Fill Law Condition 1 [PRE], 2 [PRE] and 3[GEN]: to clarify that the conditions apply prior to or during construction (Section V.B, p 216).

No additional changes were made to recommended conditions, and as noted above, neither the changes in findings of facts nor changes to recommended site certificate conditions are considered to be material changes.

CONTESTED CASE REQUESTS

Unlike an application for a site certificate, there is no requirement that an automatic contested case occur. For Type A amendment review, under OAR 345-027-0371, there is an opportunity to request a contested case proceeding. As established in the Public Notice on the Proposed Order, all requests for contested case must have been submitted no later than December 21, 2024 at 5:00 p.m. PT to be considered. The Department received four requests for a Contested Case within the time frame. They are included, in full, in Attachment 2.

Before considering whether an issue justifies a contested case proceeding, the Council must determine each issue to have been properly raised. For an issue to be properly raised, it must meet all of the following:

1. The issue was raised in person or in writing on the record of the DPO unless the Department did not follow the requirements of OAR 345-027-0367, or unless the action recommended in the proposed order differs materially from the DPO, including any recommended conditions of approval, in which case the person may raise only new issues within the jurisdiction of the Council that are related to such differences; and
2. The issue must be related to the amendment and within Council's jurisdiction; and
3. The issue must have been raised with sufficient specificity with facts that support the position on the issue to allow: the certificate holder the opportunity to respond prior to the close of the DPO record; the Council the opportunity to respond either during the DPO hearing or their review of the DPO; and the Department the opportunity to respond with amended findings of facts, conclusions of law and conditions of approval in the Proposed Order.

For each property raised issue Council has the following options:

1. The issue justifies a Contested Case – The Council must find that the contested case request raises a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24.
2. The issue can be resolved by amending the Proposed Order – The Council must deny the contested case request and remand Proposed Order to the Department with direction to amend the Proposed Order in a manner satisfactory to the Council.
3. Deny Contested Case Request – The Council must find that the contested case request does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24.

Each contested case request and the Department's evaluation of each is summarized in the table below. The full copies of the contested case requests are included in Attachment 2.

Table 1: ODOE Evaluation of Requests for Contested Case Requests

| Requestor/Commenters and *location in record | DPO Comments Issues Raised/Comment Summary | Certificate Holder Responses Summary, as applicable | Related EFSC Standards and/or Requirements, as applicable | Department’s Presentation to Council at DPO Review/Changes in Proposed Order | Issue Statement in Request for Contested Case | Issue Properly Raised in Request for Contested Case* (Yes/No) | Does the request raise a significant issue of fact or law that is reasonably likely to affect the Council’s determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, justifies a contested case? (Yes/No) |
|--|--|---|---|--|--|---|--|
| Commentors on Draft Proposed Order and Contested Case Requestors | | | | | | | |
| <p><u>Contested Case Requestor:</u> Cole Souder, Green Energy Institute. *MSTAMD13Doc151</p> <p><u>DPO commenter(s):</u> Cole Souder and others, Green Energy Institute Comment Letter *MSTAMD13Doc105</p> | <p>EFSC need standard - Commenters ask EFSC to adopt an ad hoc “need” standard into the regulations and then use that “need” standard to deny “RFA 13”</p> | <p>The need standard only applies to three types of “nongenerating facility[ies]” as defined in ORS 469.503. It does not apply to RFA13 because RFA13 does not fall under one of the three types of facilities that require a need analysis. EFSC cannot apply the need standard to RFA13 without first amending OAR 345-023-0005, which would require a formal rulemaking process.</p> | <p>Need Standard for Non- generating Facility - OAR 345-023-0005; ORS 469.503 definitions</p> | <p>The Department agrees with the 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. Agencies must follow their rules until the rules are properly amended or repealed. <i>Harsh Inv. Corp. v. State</i>, 88 Or App 151, 157, 744 P2d 588 (1987) The commenters do not articulate a legal basis in the statutes or rules governing EFSC procedures that would allow Council to deny NWN’s RFA13 until Council adopts a need standard for surface facilities related to an underground gas storage reservoir.</p> | <p>OAR 345-023-0005 establishes the Council’s authority to apply a need standard... Council does not have to perform a formal rulemaking to apply a need standard to Amendment 13... 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.</p> <p>ORS 469.503(2)(f); ORS 469.300(12)(a)(C), (E)–(I) 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...”</p> | <p>Yes, as raised in DPO comments*</p> | <p>No: OAR 345-023-0005 states: <i>“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.”</i></p> <p>In their September 19, 2024 comments on the DPO, the Green Energy Institute (“GEI”) asserted “the reservation in OAR 345-023-0005(1) that ‘the Council may adopt needs (sic) standards for other nongenerating facilities’ provides Council the ability to <i>adopt a standard</i> for surface facilities and apply that <i>new standard</i> to Amendment 13” (emphasis added). In response the Department recommended Council not take action on this request, explaining that Council’s need rule did not apply to the Mist facility and observing that the comments did not articulate a legal basis for Council to deny NWN’s RFA13 while Council adopted a need standard for surface facilities related to an underground gas storage reservoir and then apply the new standard to RFA13.</p> <p>*Additional arguments and facts provided in Request for Contested Case but not within DPO comments, are not considered properly raised.</p> <p><u>Facts/Evidence to Support Issue that Cannot be Considered:</u> In their request for a contested case, GEI revises their position to argue that Council does <i>not</i> need to adopt a new standard for surface facilities related to underground gas reservoirs. Instead, they now argue that same</p> |

Table 1: ODOE Evaluation of Requests for Contested Case Requests

| Requestor/Commenters and *location in record | DPO Comments Issues Raised/Comment Summary | Certificate Holder Responses Summary, as applicable | Related EFSC Standards and/or Requirements, as applicable | Department’s Presentation to Council at DPO Review/Changes in Proposed Order | Issue Statement in Request for Contested Case | Issue Properly Raised in Request for Contested Case* (Yes/No) | Does the request raise a significant issue of fact or law that is reasonably likely to affect the Council’s determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, justifies a contested case? (Yes/No) |
|---|---|--|---|---|--|---|---|
| | | | | | | | <p>sentence in OAR 345-023-0005 (“The Council may adopt need standards for other nongenerating facilities”) gives the Council the authority to apply a need standard only to Mist’s RFA13 without any additional rulemaking. (See Request for Contested Case, p. 8). <u>Although GEI did not assert in their comments on the DPO that Council could apply a need standard just to the Mist facility / RFA 13 and without adopting a new rule, the Department nevertheless recommends that, pursuant to OAR 345-027-0371(7) Council find GEI properly raised the issue for which they are requesting a contested case because GEI raised the issue of compliance with the need standard in their comments on the DPO.</u></p> <p>Green Energy Institute did not make this argument in their comments on the DPO. Therefore, the Department recommends that, pursuant to OAR 345-027-0371(7) Council reject the request for a contested case because GEI did not raise this issue on the record of the DPO with sufficient specificity to afford the Council, the Department and the certificate holder an adequate opportunity to respond to the issue.[‡]</p> <p>Further, even if GEI had properly raised this issue with sufficient specificity, a contested case would still not be justified because the history of the rule demonstrates their interpretation of the rule is wrong. Nevertheless, a contested case is not justified because, for Council to apply a need standard to RFA13, it would first have had to adopt a need standard for surface facilities related to underground gas storage reservoirs in rule. ORS 469.501 authorizes Council to standards for the siting, construction, operation and retirement of facilities, including a standard addressing the need for nongenerating facilities. The Council has always adopted the standards described in ORS 459.501 in rule, including</p> |

[‡]OAR 345-027-0371(7) states: *Before considering whether an issue justifies a contested case proceeding under section (9) of this rule, the Council must determine that the person requesting a contested case commented in person or in writing on the record of the public hearing and properly raised each issue included in the request. To determine that a person properly raised each issue included in the request, the Council must find that:*

(a) The person making the contested case request raised the issue on the record of the public hearing described in OAR 345-027-0367 with sufficient specificity to afford the Council, the Department, and the certificate holder an adequate opportunity to respond to the issue

Table 1: ODOE Evaluation of Requests for Contested Case Requests

| Requestor/Commenters and *location in record | DPO Comments Issues Raised/Comment Summary | Certificate Holder Responses Summary, as applicable | Related EFSC Standards and/or Requirements, as applicable | Department’s Presentation to Council at DPO Review/Changes in Proposed Order | Issue Statement in Request for Contested Case | Issue Properly Raised in Request for Contested Case* (Yes/No) | Does the request raise a significant issue of fact or law that is reasonably likely to affect the Council’s determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, justifies a contested case? (Yes/No) |
|---|---|--|---|---|--|---|---|
| | | | | | | | <p><u>a need standard for certain types of nongenerating facilities, set forth in OAR 345-023-0005. Further, the history of OAR 345-023-0005 demonstrates GEI’s interpretation of the rule is not correct.</u> In 1999, Council amended its need standard; as part of those changes Council added the statement “[t]he Council may adopt need standards for other nongenerating facilities.” The Staff Report addressing the rule revisions explained that <u>t</u>The proposed amendments retained<u>ed</u> the current exemption of surface facilities related to underground natural gas storage from the need standard while retaining its discretion to adopt, <i>through rulemaking</i>, new need standards in the future.²</p> <p>The need standard does not apply to this nongenerating facility.³ Therefore, the statement in OAR 345-023-0005(1) that “[t]he Council may adopt need standards for other nongenerating facilities” is only reiterating Council’s authority to adopt a need standard for other facilities not currently identified in the rule. Council has not chosen to do this to-date and, as noted in the 1999 Staff Report, if it did so, it would do so through a rulemaking.</p> <p>The Proposed Order on RFA13, Section II.C.2 includes Table A-1, which includes the summary response from the certificate holder and Department (provided in this table for convenient reference). The Department recommends Council find that the above analysis, coupled with the responses to this issue as provided in Proposed Order Table A-1 are sufficient, that a contested case on this issue is not justified and that no amendments to the Proposed Order are necessary.</p> |

² MSTAMD13Doc153 Information EFSC-Staff-Report-2-1999-John-G-White-Draft-Proposed-Rules-OAR-Chapter-345-1999-Revisions, Division 23 1999-02-26, p.9. “Under the proposed amendments, 345-023-0005 does not apply a need standard to all facilities but only to those types of facility listed in the rule....There is no implication here that surface facilities related to underground natural gas storage are being treated, as the public comment has said, ‘in a class by themselves’. The proposed amendments retain the current exemption of those facilities from the need standard...Council retains the discretion it has always had under the current rules to adopt, through rulemaking, new need standards in the future.” (Emphasis in original – See Attachment 3 for full copy).

³ MSTAMD13Doc153 Information EFSC-Staff-Report-2-1999-John-G-White-Draft-Proposed-Rules-OAR-Chapter-345-1999-Revisions, Division 23 1999-02-26, p.9. “Under the proposed amendments, 345-023-0005 does not apply a need standard to *all* facilities but only to those types of facility listed in the rule....There is no implication here that surface facilities related to underground natural gas storage are being treated, as the public comment has said, ‘in a class by themselves’. The proposed amendments retain the current exemption of those facilities from the need standard...Council retains the discretion it has always had under the current rules to adopt, through rulemaking, new need standards in the future.” (Emphasis in original— See Attachment 3 for full copy).

Table 1: ODOE Evaluation of Requests for Contested Case Requests

| Requestor/Commenters and *location in record | DPO Comments Issues Raised/Comment Summary | Certificate Holder Responses Summary, as applicable | Related EFSC Standards and/or Requirements, as applicable | Department’s Presentation to Council at DPO Review/Changes in Proposed Order | Issue Statement in Request for Contested Case | Issue Properly Raised in Request for Contested Case* (Yes/No) | Does the request raise a significant issue of fact or law that is reasonably likely to affect the Council’s determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, justifies a contested case? (Yes/No) |
|---|---|---|---|---|--|---|--|
| <p><u>Contested Case Requestor:</u> Cole Souder, Green Energy Institute. *MSTAMD13Doc151</p> <p><u>DPO Commenter(s):</u> Cole Souder and others, Green Energy Institute Comment Letter, *MSTAMD13Doc105</p> | Increased carbon emissions and inconsistency with state’s climate policy and HB2021, and therefore Council should only approve facilities related to natural gas that are <i>needed</i> . | HB 2021 does not affect the determination here because it expressly relates to generating facilities, not non-generating facilities. House Bill 3630 gives ODOE the discretion to determine and develop the best strategy to achieve the state’s energy policy objectives and does not prohibit expansion of existing facilities. | NA | Council has not adopted a need standard for surface facilities related to an underground gas storage reservoir and recent statutory changes precluding EFSC from approving new or amended facilities that would produce or result in a significant increase in CO2 emissions, respectively, specifically apply to “generating facilities”, and not to “nongenerating facilities.” | <p>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.</p> <p>ORS 469A.410. 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.</p> <p>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*.</p> <p>Pursuant to ORS 469.501, the Council’s Facility Need [standard] should be applied in a manner consistent with Oregon’s energy policy.</p> | Yes, as raised in DPO comments* | <p>No: HB2021 referenced in DPO comments but issue of indirect ownership by PGE was not specifically raised in comments on DPO. Council cannot impose PGE requirements on certificate holder, which is Northwest Natural Gas Company.</p> <p>*Additional arguments and facts provided in Request for Contested Case but not within DPO comments, are not considered properly raised.</p> <p><u>Facts/Evidence to Support Issue that Cannot be Considered:</u></p> <p>The HB 3630 energy strategy referenced has not been finalized and has not yet been released, which makes it inapplicable to Council’s review at this time.</p> <p>In November 2024, DEQ reinstated the Climate Protection Program (“CPP”) – after public comment period on RFA13 and is not retroactively applicable.</p> <p>Department response to need standard is addressed above.</p> |
| <p><u>Contested Case Requestor(s):</u> Daniel Schatz Samuel Semerjian Maria Gibson- Daugherty/American Aquifers “MSTAMD13Doc149,150,152</p> <p><u>DPO Commenters:</u></p> | Alleged public health and safety concerns and impacts from environmental contamination of area aquifers and groundwater/drinking water from Mist | Certificate holder and several federal and state regulatory agencies, including DOGAMI, DEQ, ODOE, and U.S. Pipeline and Hazardous Materials Safety Administration, reviewed the concerns that were raised and did not find any violations in how NWN operates and | NA | The issues raised in these comments are not specific to the proposed RFA13 changes to surface facilities. Issues of factual dispute, as presented in the American Aquifers letter submitted by the commenters, are evaluated further below. | Alleged groundwater contamination potential due to fracking and abandoned wells. | Yes, as raised in | <p>No: The issues raised in these comments and the contested case request are not specific to the proposed RFA13 changes to surface facilities.</p> <p>Issues of factual dispute, as submitted in comments on the DPO and in contested case requests, were addressed in the Proposed Order. See responses to comments in Section II.C.2 includes Table A-1, for summary response</p> |

Table 1: ODOE Evaluation of Requests for Contested Case Requests

| Requestor/Commenters and *location in record | DPO Comments Issues Raised/Comment Summary | Certificate Holder Responses Summary, as applicable | Related EFSC Standards and/or Requirements, as applicable | Department’s Presentation to Council at DPO Review/Changes in Proposed Order | Issue Statement in Request for Contested Case | Issue Properly Raised in Request for Contested Case* (Yes/No) | Does the request raise a significant issue of fact or law that is reasonably likely to affect the Council’s determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, justifies a contested case? (Yes/No) |
|---|---|---|---|--|---|---|---|
| Samuel Semerjian Maria Gibson/American Aquifers Daniel Schatz *MSTAMD13Doc98 through MSTAMD13Doc102; MSTAMD13Doc112 | Underground Natural Gas Storage Facility | <p>maintains natural gas storage operations.</p> <p>DOGAMI enforces storage well design and implementation standards to prevent the release of any natural gas into the atmosphere or contamination of the native aquifers. These standards remain at or above the level of national storage standards set by PHMSA.</p> <p>The Mist Underground Natural Gas Storage Facility employs a variety of technologies and systems to monitor the wellheads and pipelines. In addition to continuous monitoring of the storage wells and associated transmission line pressure via SCADA, wellheads, well safety systems, well piping, and site locations are inspected for operability, leaks, and mechanical or other faults weekly under our integrity monitoring program. Wellhead master valves and pipeline isolation valves are tested at least annually to ensure proper function and ability to isolate the well.</p> | | | | DPO comments | <p>from the certificate holder and Department (provided in this table for convenient reference).</p> <p>The Department recommends Council find that the responses to this issue as provided in Proposed Order Table A-1 are sufficient and no amendments to the Proposed Order are necessary.</p> |
| <u>Contested Case Requestor(s):</u> Daniel Schatz, Samuel Semerjian, Maria Gibson- Dougherty/American Aquifers | Exhibit H and inadequate/outdated data relied upon for RFA13 assessment of seismic risks; seismic | None provided | Structural Standard - OAR 345-022- 0020, Exhibit H | Council previously authorized the Department to work with consultant Haley-Aldrich. The Department worked with Haley-Aldrich to evaluate the alleged dispute in facts | The “best available science” has not been applied to adequately evaluate the geologic hazards and risks associated with the Mist Gas Field. Exhibit H should be considered outdated information. | Yes: as raised in | <p>No: EFSC relies on a “preponderance of evidence” standard for review.</p> <p>Haley-Aldrich consultants who evaluated DPO comments and prepared technical memo were Kevin Loeb, P.G.,</p> |

Table 1: ODOE Evaluation of Requests for Contested Case Requests

| Requestor/Commenters and *location in record | DPO Comments Issues Raised/Comment Summary | Certificate Holder Responses Summary, as applicable | Related EFSC Standards and/or Requirements, as applicable | Department’s Presentation to Council at DPO Review/Changes in Proposed Order | Issue Statement in Request for Contested Case | Issue Properly Raised in Request for Contested Case* (Yes/No) | Does the request raise a significant issue of fact or law that is reasonably likely to affect the Council’s determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, justifies a contested case? (Yes/No) |
|--|---|--|---|--|---|---|---|
| <p>*MSTAMD13Doc149,150,152</p> <p><u>DPO Commenter(s):</u> Samuel Semerjian Maria Gibson/American Aquifers Daniel Schatz *MSTAMD13Doc98 through MSTAMD13Doc102; MSTAMD13Doc112</p> | <p>risks not adequately characterized.</p> <p>RFA13 Exhibit H Table H-8 is not based on USGS’s 2020 geologic hazards map; recent USGS mapping shows extensive faulting and cap rock exposure within the southernmost boundary of the gas field.</p> | | | <p>related to the RFA13 Exhibit H. Based on Haley-Aldrich’s memo, as provided in Attachment B-4, the issues raised in the American Aquifers letter do not negate the merits or validity of the geotechnical investigation or results provided by NWN in RFA13 Exhibit H. Additional facts from Haley-Alrich review memo⁴ are included in Section III.C. Structural Standard.</p> <p>The Department requested DOGAMI review of Exhibit H and the comments received in the American Aquifers form letter submitted by multiple commenters and conferred with DOGAMI on November 18, 2024 to review the comment letter. In that conferral, DOGAMI noted that while additional sources could have been relied upon the sources and findings utilized in Exhibit H are sound and that the inclusion of additional sources would not change the evaluation in the geotechnical reports.</p> | <p>Facility not in compliance with OAR 345-022-0020 by not properly identifying potential geological hazards.</p> <p>There is uncertainty regarding the number of wells and their condition and status. Seismic hazards resulting from Cascadia Subduction Zone are a threat to public health and safety.</p> <p>The facility has been operating outside of the conditions listed in OAR 345-022-0020 by not properly identifying potential geological hazards.</p> | <p>comments on the DPO.</p> | <p>C.E.G., L.G., Engineering Geologist; Emrah Yenier, Senior Engineering Seismologist; Jennifer Casler, R.G., Senior Associate Geologist. Haley-Aldrich evaluation and additional consultation with DOGAMI validated the sources used and findings in geotechnical reports cited in Exhibit H, as included in Proposed Order revisions. Newer sources cited in comments were evaluated by Haley- Aldrich and reviewers found the additional information to not significantly change the evaluation of seismic risk as assessed in Exhibit H.</p> <p>Issues about storage wells and the past and current management of storage wells and nearby but unrelated facilities are under review and permit by DOGAMI are outside the scope of Council’s review, RFA13 and the facility site certificate.</p> |
| <p><u>Contested Case Requestor(s):</u> Daniel Schatz Samuel Semerjian</p> | <p>Alleged illegal dumping of contaminants, soil contamination and enforcement and</p> | <p>Certificate holder and several federal and state regulatory agencies, including DOGAMI, DEQ, ODOE, and U.S. Pipeline and Hazardous Materials Safety</p> | <p>NA</p> | <p>No: The issues raised in these comments are not specific to the proposed RFA13 changes to surface facilities.</p> | <p>Alleged environmental contamination and environmental compliance issues and for these reasons the facility does not meet the requirements of OAR 345-022-0020.</p> | <p>Yes</p> | <p>No: The issues raised in these comments are not specific to the proposed RFA13 changes to surface facilities.</p> |

⁴ MSTAMD13Doc123 Proposed Order Haley Aldridge Review Exhibit H and DPO Comment Letter 2024-11-06

Table 1: ODOE Evaluation of Requests for Contested Case Requests

| Requestor/Commenters and *location in record | DPO Comments Issues Raised/Comment Summary | Certificate Holder Responses Summary, as applicable | Related EFSC Standards and/or Requirements, as applicable | Department’s Presentation to Council at DPO Review/Changes in Proposed Order | Issue Statement in Request for Contested Case | Issue Properly Raised in Request for Contested Case* (Yes/No) | Does the request raise a significant issue of fact or law that is reasonably likely to affect the Council’s determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, justifies a contested case? (Yes/No) |
|---|---|--|---|---|--|--|---|
| Maria Gibson- Daugherty/American Aquifers *MSTAMD13Doc149,150,152 <u>DPO Commenter(s):</u> Samuel Semerjian Maria Gibson/American Aquifers Daniel Schatz *MSTAMD13Doc98 through MSTAMD13Doc102; MSTAMD13Doc112 | other concerns about environmental compliance issues with facility | Administration reviewed the concerns that were raised and did not find any violations in how NWN operates and maintains natural gas storage operations. | | | | | These issues were raised in the contested case requests and comments submitted on the record of the DPO, however, they were not made with sufficient specificity or any supporting evidence to allow the Department, its consultants, or reviewing agencies to evaluate the claims made. No evidence of illegal dumping or other environmental contamination was submitted in comments or the contested case requests. Allegations made are not specific to the EFSC site certificate, a Council standard, or facility components governed by the EFSC site certificate but instead refer to allegations of past management of lands and facilities by non-EFSC entities. |
| Daniel Schatz Samuel Semerjian Maria Gibson- Daugherty/American Aquifers *MSTAMD13Doc149,150,152 | Alleged Conflicts of Interest between Department, DOGAMI, DEQ, USEPA, NWN and Haley-Aldrich | N/A | N/A | N/A | There is a conflict of interest because Department is using Haley-Aldrich as a third party consultant to respond to comments on the DPO and one of the DOGAMI board members works for Haley-Aldrich, and other conflicts between certificate holder, DOGAMI, DEQ, USEPA, Columbia County. | No - these issues were raised after DPO comment period closed. Department evaluates anyway. | No: Haley-Aldrich is a third-party consultant under an established master contract ⁵ to provide technical services for the Department, and their technical evaluation is on behalf of the Department, to provide subject-matter expertise in response to comments received on the DPO and are allowable in the Proposed Order as part of the Department’s evaluation and response to comments. DOGAMI provided verbal, but not written, comments on the DPO. Haley-Aldrich consultants who evaluated Exhibit H, DPO comments, and prepared technical memo were Kevin Loeb, P.G., C.E.G., L.G., Engineering Geologist; Emrah Yenier, Senior Engineering Seismologist; Jennifer Casler, R.G., Senior Associate Geologist. Specific assertions of conflict of interest re: Haley-Aldrich were not made in public comments on DPO and do not apply to changes made by the Department in the Proposed Order. Comments on the DPO must be made with sufficient specificity to allow for the certificate holder, the Council, and the Department to respond to them in the Proposed Order. Additionally, no evidence of conflicts |

⁵ Under Task III of the current master contract (approved in 2020), Haley-Aldrich may provide the following technical support services to the Department: Using a format specified by the Department, the Consultant will assist the Department with completion of the review process and may be asked to prepare written recommendations for review by the Department for inclusion in its Draft Proposed Order for the application , or Proposed Order for an amendment to a site certificate, along with preparation of meeting notices and materials to assist the decision-making process. The written deliverables may include, but are not limited to, the following:***2. A description of the existing conditions at or in the vicinity of the project covered by the application;3. A report of the consequences of the proposed project;4. An evaluation of the applicant’s ability to comply with applicable standards and laws, etc.; 5. An evaluation of the applicant’s proposed measures to eliminate or reduce significant impacts and comply with applicable laws; 6. Recommendation for additional mitigation measures***

Table 1: ODOE Evaluation of Requests for Contested Case Requests

| Requestor/Commenters and *location in record | DPO Comments Issues Raised/Comment Summary | Certificate Holder Responses Summary, as applicable | Related EFSC Standards and/or Requirements, as applicable | Department’s Presentation to Council at DPO Review/Changes in Proposed Order | Issue Statement in Request for Contested Case | Issue Properly Raised in Request for Contested Case* (Yes/No) | Does the request raise a significant issue of fact or law that is reasonably likely to affect the Council’s determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, justifies a contested case? (Yes/No) |
|---|---|--|---|---|--|---|---|
| | | | | | | | of interest was provided in the requests for contested case. |

COUNCIL OPTIONS:

1. Council Decision on Requests for Contested Case
 - a. Hold a Contested Case
 - b. Deny Contested Case Requests and Remand Proposed Order to Department
 - c. Deny Contested Case Requests (Department Recommendation)
2. Council Decision on Final Order (only if Council chooses option c above)
 - a. Approve (Department Recommendation). Adopt the Proposed Order as the Final Order, and issue an amended site certificate, subject to the recommended findings, conclusions, and conditions of approval in the Proposed Order.
 - b. Approve with Changes – The Council may make changes from the Proposed Order to the Final Order.
 - c. Deny – The Council may also deny RFA13 with modified findings.