



# Oregon

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**To:** Energy Facility Siting Council

**From:** Thomas Jackman, Rules Coordinator

**Date:** May 30, 2025

**Subject:** Agenda Item I (Action Item):  
Council Review of OAR 345-001-0250 for the June 13, 2025 EFSC Meeting

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## BACKGROUND

ORS 183.405 of the Administrative Procedures Act requires agencies to review all newly adopted rules within five years after adopting them. Per that statute, the Council must conduct a review to determine:

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- Whether subsequent changes in the law require that the rule be repealed or amended;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

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

In 2020, Council passed a new rule, OAR 345-001-0250 ("Solar Photovoltaic Power Generation Facilities," which was designed to create a path for the Council to determine whether "a proposed solar photovoltaic power generation project is an expansion of an existing or proposed solar photovoltaic power generation facility." The entire rule has been copied at the end of this staff report.

Review of this rule is challenging, as it has not been utilized in the last five years.

## RECOMMENDED COUNCIL ACTION

### *Staff's Proposed Findings:*

Given that this OAR 345-001-0250 has not yet been used by the Council, it is fair to say that the impact of this new rule is minor as far the 5-year review is intended to assess. Staff recommends Council find the following:

- The new rules have had the intended effect – insofar as this rule existing gives the Council a tool it previously lacked and can be utilized if need be;
- The anticipated fiscal impact of the rule was that there would be a minor impact, if any, and that this assessment has proven to be true. To date, Council has never used these rules to perform a determination;
- There are no subsequent changes in the law require that the rules be repealed or amended;
- There is a continued need for this new rule, for reasons stated above; and
- There are no impacts of these rules on small businesses, who have not yet proposed an energy facility subject to review by the Council.

Here is the rule in question, included in its entirety:

### **345-001-0250 - Solar Photovoltaic Power Generation Facilities**

(1) To determine that a proposed solar photovoltaic power generation project is an expansion of an existing or proposed solar photovoltaic power generation facility as described under OAR 345-001-0010(56)(b), the Council must find that the preponderance of the evidence on the record of a declaratory ruling issued under this rule, or other proceeding before the council, supports such a conclusion. In making findings under this section, the Council may consider factors including, but not limited to:

- (a) The permitting or operational status of the existing or proposed solar photovoltaic power generation facility;
- (b) Whether or not operational and financing decisions for the proposed project would be made independently from the existing or proposed solar photovoltaic power generation facility;
- (c) Whether or not the output of the proposed project and the proposed or existing solar photovoltaic power generation facility would be sold under separate power purchase agreements; and
- (d) Whether or not the output of the project and the proposed or existing solar photovoltaic power generation facility would be transmitted under separate interconnection agreements.

(2) Any person, including the Department, may petition the Council to issue a declaratory ruling with respect to the applicability of ORS 469.300(11)(a)(D) and section (1) of this rule to a proposed solar photovoltaic power generation project. The Council will review such a petition under the procedures described in OAR 137-002-0010 to 137-002-0060, subject to the following:

- (a) A petition under this rule must be submitted to the Department in writing and must include all information required under OAR 137-002-0010, including:
  - (A) The name of the developer or owner of the proposed solar photovoltaic power generation project;
  - (B) A specific request for findings that a proposed solar photovoltaic power generation project is either:
    - (i) An expansion or modification of a proposed or existing solar photovoltaic power generation facility; or

- (ii) A separate and independent solar photovoltaic power generation facility;
  - (C) A detailed statement of facts relevant to the factors described under section (1) of this rule, including sufficient facts to show the petitioner's interest in the outcome of the requested declaratory ruling; and
  - (D) The name and address of petitioner and of any other person known by petitioner to be interested in the requested declaratory ruling.
- (b) Within seven days after a petition is filed under this section, the Department will post an announcement of the petition to the Department's website.
- (c) If the Council decides to issue a ruling, the petitioner, the owner or developer of the proposed solar photovoltaic power generation project, and the Department will be parties to the proceeding. Other persons may petition the Council for permission to participate in the proceedings as described in OAR 137-002-0025; and
- (d) The Council will not issue a ruling on the petition if the owner or developer of the solar photovoltaic power generation project indicates that it intends to submit a notice of intent to file an application for a site certificate for a facility containing the proposed solar photovoltaic power generation project within 60 days after the petition is filed with the agency. If the NOI is not submitted by the date indicated, the Council will immediately serve notice on the parties under OAR 137-002-0020.
- (3) The Council will not make a ruling on the applicability of ORS 469.300(11)(a)(D) or section (1) of this rule to any solar photovoltaic power generation facility with a land use permit approved by a local government on or before the effective date of this rule unless a solar photovoltaic power generation project is proposed on lands within one mile of the solar photovoltaic power generation facility.
- (4) The developer or owner of a solar photovoltaic power generation facility is not subject to fees under ORS 469.421(1) for the expenses incurred by the Council and Department related to proceedings under section (2) of this rule.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.300