

Oregon Department of **ENERGY**

Energy Facility Siting
Council Meeting

ODOE Office/ Meitner
550 Capitol Street NE
Salem, Oregon

September 19, 2025



Opening Items:

- Call to Order
- Roll Call
- Announcements

Announcements:

- Reminder to Council and to anyone addressing the Council to please remember to state your full name clearly, and no not use the speakerphone feature, as it will create feedback.
- You may sign up for email notices by clicking the link on the agenda or the Council webpage.
- You are also welcome to access the online mapping tool and any documents by visiting our website.

Announcements continued:

- Please silence your cell phones
- Please use the “Raise Your Hand” feature in Webex to speak during the public comment period, or press *3 to raise your hand if you are participating by telephone.
- Energy Facility Council meetings shall be conducted in a respectful and courteous manner where everyone is allowed to state their positions at the appropriate times consistent with Council rules and procedures. Willful accusatory, offensive, insulting, threatening, insolent, or slanderous comments which disrupt the Council meeting are not acceptable. Pursuant to Oregon Administrative Rule 345-011-0080, any person who engages in unacceptable conduct which disrupts the meeting may be expelled.



Agenda Item A (Action Item & Information Item)

Consent Calendar

- July Council Meeting Minutes
- Council Secretary Report

September 19, 2025

Compliance Updates

Facility	Issue	Status
Biglow Canyon Wind Farm	Blade Stud Found on Ground	Open
Biglow Canyon Wind Farm	Hub Hatch Found on Ground	Open
Pachwaywit Fields Solar	Fire – Vegetation Only	Open
Daybreak Solar Project	Fire – Vegetation and Facility Components	Open
Oregon Trail Solar	Inadvertent Discovery – petrified wood	Closed
Boardman to Hemingway Transmission Line	Sediment discharge to intermittent stream	Open
	Cultural resource buffer encroachment	Closed

Agenda Item B (Information Item)

ORESA Mapping Tool Tutorial Presentation

Bibi Bartley, Policy and Operations Analyst

September 19, 2025



ORESA Mapping Tool



- The Oregon Renewable Energy Siting Assessment (ORESA) project was funded through a \$1.1 million U.S. Department of Defense Office of Local Defense Community Cooperation grant awarded to the Oregon Department of Energy, working with the Department of Land Conservation & Development and Oregon State University's Institute for Natural Resources.
- The objective for the Oregon Renewable Energy Siting Assessment Map Viewer and Reporting Tool was to assemble baseline data to create a transparent, consistent collection of trusted, accurate information, without recommendations or endorsements.



ORESA Mapping Tool Landing Page

Explore Data: View EFSC facilities layers, browse, download, and interact with map layers

Get a Report: Create a map layer to evaluate potential project locations, view contact information for relevant regulatory bodies

Learn: Learn more about the ORESA tool, how it was created, the data that drives the different layers and find more Oregon Explorer resources through the Oregon Explorer Natural Resources Digital Library: [Tools](#) | [Oregon Explorer](#)

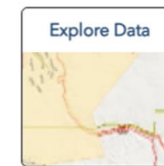


Welcome

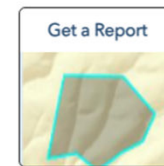


Welcome to the Oregon Renewable Energy Siting Assessment Tool

The ORESA tool is an interactive application that allows users to review data and input potential project characteristics in order to get a coarse level perspective of potential land use, military, natural resources and other considerations.



Browse, download, and interact with map layers



Land use considerations and contact information for your area of interest



Learn about siting procedures, incentives, and processes for military coordination

US DOD-OLDCC Grant Disclaimer: This deliverable was prepared under contract with the Oregon Department of Energy, with financial support from the Office of Local Defense Community Cooperation, Department of Defense. The content reflects the grant objectives and efforts of Oregon Department of Energy and its project partners, and does not necessarily reflect the views of the Office of Local Defense Community Cooperation.



Close

Agenda Item C (Information Item)

Council Review of Its Delegation Authority Under ORS 469.402

Sarah Esterson, Senior Policy Advisor

September 19, 2025



Evidence-based Process

ORS 469.503, 469.402

- Applications for site certificate/requests for site certificate amendments must show a preponderance of facts/evidence for Council to determine that all applicable requirements are met. ORS 469.503
- If approved, site certificates often contain conditions that will result in additional facts/evidence required to meet applicable requirements.
 - Site certificate compliance review is predominately completed at a staff level, rather than Council.
 - Council delegates future review and approval authority to staff, when warranted. ORS 469.402

Statutory Authority

ORS 469.402

If the Energy Facility Siting Council elects to impose conditions on a site certificate or an amended site certificate, that require subsequent review and approval of a future action, the council may delegate the future review and approval to the State Department of Energy if, in the council's discretion, the delegation is warranted under the circumstances of the case.

- Adopted in 1995
- Amended in 1999



ORS 469.402 Evaluation in Contested Case

Legal Proceedings

Example 1: Saddle Butte Wind Park Facility

- Process evaluated whether use of ORS 469.402 was appropriate given that the public would not have an opportunity to review a future, finalized mitigation plan. Determined that future changes were limited; substantive requirements were established during the public process.

Example 2: Boardman to Hemingway Transmission Line

- Process evaluated whether use of ORS 469.402 was appropriate given that the public would not have an opportunity to review future, finalized mitigation plans. Determined that neither rule or statute requires that a public process be made available when delegated authority has been exercised by Council to staff.

ORS 469.402 – Where is it used?

Site Certificates/Mitigation Plans

Examples

Organizational Expertise:

- Conditions require certificate holders to provide evidence that they have selected qualified contractors, and qualified onsite construction managers to manage compliance with site certificate requirements, subject to review by the Department.

Fish and Wildlife Habitat:

- Conditions require finalization of mitigation plans (habitat, revegetation) based on final selected mitigation site and final impacts at the site, subject to review and approval by the Department.

Structural Standard:

- Conditions require completion of site-specific geotechnical investigations, subject to review by the Department.



ORS 469.402 – Where is it used?

Mitigation Plans

Delegation Authority is not absolute in every instance.

Mitigation plans typically include the following:

*This Plan may be amended from time to time by agreement of the Applicant and the Oregon Energy Facility Siting Council (EFSC). Such amendments may be made without amendment of the site certificate. EFSC authorizes ODOE to agree to amendments to this plan. ODOE shall notify EFSC of all amendments, and **EFSC retains the authority to approve, reject, or modify any amendment of this plan agreed to by ODOE.***

Mitigation plan amendments are presented at Council meetings to allow the Council the ability to “approve, reject or modify” future changes, outside of the formal amendment process.

Council meetings and materials allow the public to track and be aware of mitigation plan changes.

ORS 469.402 Implementation Improvements

Council findings should include the following

The Department recommends Council incorporate the following into orders where it intends to exercise ORS 469.402.

Pursuant to ORS 469.402, the Council finds the following circumstances warrant delegating to the Department *[and any other agency involved]* the authority to *[describe the authority being delegated – e.g., review and approval of the final XXX Plan]* as described in Condition XX:

- The draft _____ Plan includes information needed to assess the merit of the plan, including: *[list key elements included in the draft Plan]*
- The public has had the opportunity to review and comment on the draft _____ Plan
- It is not *[feasible/practical/possible]* to finalize the _____ Plan prior to issuance of the site certificate because *[xxx]*.

BREAK

Agenda Item D (Information Item)

ODOE Update

Janine Benner, ODOE Agency Director

September 19, 2025



Oregon Department of **ENERGY**

ODOE Update

Janine Benner
Director

September 19, 2025





OREGON DEPARTMENT OF ENERGY

Leading Oregon to a safe, equitable, clean, and sustainable energy future.

Our Mission

The Oregon Department of Energy helps Oregonians make informed decisions and maintain a resilient and affordable energy system. We advance solutions to shape an equitable clean energy transition, protect the environment and public health, and responsibly balance energy needs and impacts for current and future generations.

What We Do

On behalf of Oregonians across the state, the Oregon Department of Energy achieves its mission by providing:

- A Central Repository of Energy Data, Information, and Analysis
- A Venue for Problem-Solving Oregon's Energy Challenges
- Energy Education and Technical Assistance
- Regulation and Oversight
- Energy Programs and Activities

AGENCY PROGRAM DIVISIONS AND STANDING COUNCILS/GROUPS



ENERGY PLANNING & INNOVATION

Provide information, analysis, technical assistance, and project management to achieve cost-effective energy efficiency, promote an equitable energy transition, expand the use of renewable and alternative energy sources, promote sustainable transportation, and combat climate change.

Energy Efficiency

- Help state agencies, schools, tribes, businesses, nonprofits, industries, and farmers **improve energy efficiency**.
- Secure Oregon's continued high ranking on the list of **most energy-efficient states**.
- Administer **Oregon Agricultural and Rural Energy Assistance Program**.
- Guide implementation of **Home Energy Scoring**.
- Administer programs for **schools and public buildings**.
- Administer **Energy Efficiency and Conservation Block Grant**.

Technology and Policy

- Promote the responsible development of **diverse energy resources**.
- Address renewable energy **market challenges and opportunities**.
- Provide research and technical assistance on **emerging technologies**.
- Develop **statewide reports to support decision-making** that advances Oregon's climate and energy goals.
- Advance projects to expand the **supply of and infrastructure for alternative transportation** fuels such as locally-produced biofuels, electricity, and renewable natural gas.

Energy Codes and Standards

- Create a **database of commercial building energy consumption** to benchmark and track energy performance.
- **Evaluate and inform** policy options for continued performance improvement to support state energy goals.
- Provide energy code **education and outreach** to building owners and operators to help understand the energy code.
- **Administer multiple programs**, including Building Performance Standards, Product Energy Efficiency Standards, and 1.5% Green Energy Technology

Climate Change and Resilience

- Staff and provide climate change **policy expertise** and administrative support to the Oregon Climate Action Commission.
- Identify mitigation options and measures and support implementation of the OCAC's **Roadmap to 2035**.
- Support development of a **natural and working lands inventory** and potential climate actions.
- **Provide technical assistance** for municipal climate action planning.
- Work to **improve the resilience** of Oregon's energy sector.

OREGON ENERGY STRATEGY

House Bill 3630 (2023) Section 2

“The State Department of Energy shall develop a comprehensive state energy strategy that identifies optimized pathways to achieving the state’s energy policy objectives.”



82nd OREGON LEGISLATIVE ASSEMBLY--2023 Regular Session

Enrolled House Bill 3630

Sponsored by Representatives RAYFIELD, PHAM K, Senator GOLDEN, Representative MARSH;
Representatives ANDERSEN, BOWMAN, DEXTER, FAHEY, GAMBA, GRAYBER, HOLVEY,
HUDSON, KROPP, MCLAIN, NATHANSON, NERON, NOSSE, PHAM H, REYNOLDS, SOSA,
Senators LIEBER, PATTERSON, SOLLMAN

CHAPTER

AN ACT

Relating to energy; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

PROGRAM TO ASSIST ENVIRONMENTAL JUSTICE COMMUNITIES

SECTION 1. The State Department of Energy shall establish a program to provide assistance related to energy projects and activities to environmental justice communities, as defined in ORS 469A.400. At a minimum, the program must provide environmental justice communities with information regarding:

- (1) Funding resources.
- (2) Technical assistance.
- (3) Other support that may be available.

STATE ENERGY STRATEGY

SECTION 2. (1) The State Department of Energy shall develop a comprehensive state energy strategy that identifies optimized pathways to achieving the state's energy policy objectives.

- (2) The state energy strategy must be informed, at a minimum, by the following:
- (a) Stakeholder perspectives;
 - (b) State laws, policies and targets regarding energy and greenhouse gas emissions;
 - (c) Existing energy and integrated resource plans;
 - (d) Energy-related studies and data analysis; and
 - (e) State energy policy objectives.

(3) In identifying optimized pathways to achieving the state's energy policy objectives, the state energy strategy must take into account, at a minimum, the following factors:

- (a) State energy demand and trends;
- (b) Energy resources and technology choices in consideration of costs, energy efficiency, feasibility and availability;
- (c) Economic and employment impacts;
- (d) Energy burden and affordability;

DEVELOPING THE ENERGY STRATEGY

INPUTS

Analysis

- Energy Strategy Modeling
- Energy Wallet
- Air Quality Modeling
- Geospatial Maps
- Jobs Study

Expertise

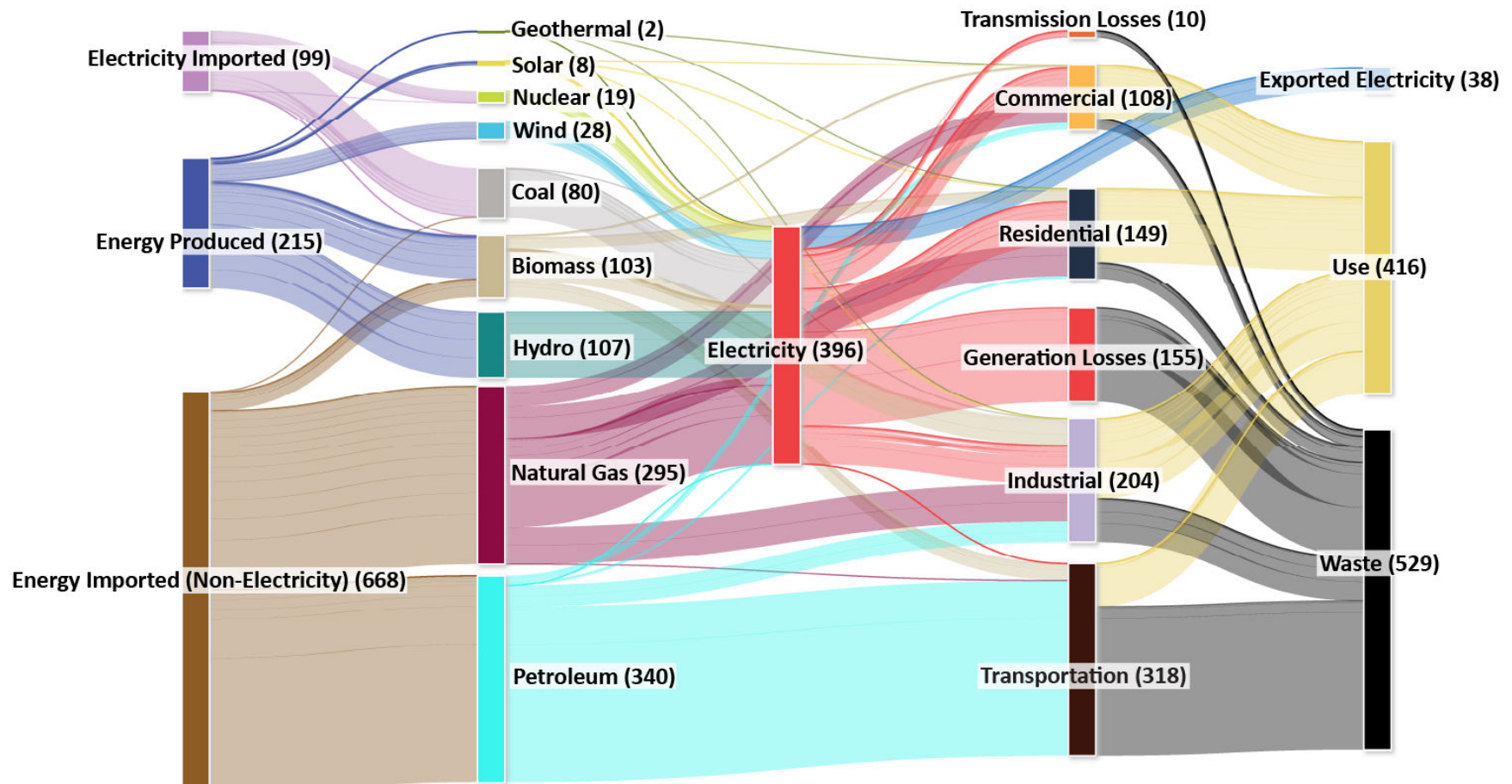
- Tribes
- Interagency Steering Group
- Advisory Group
- Working Groups
- Public Comments

**Draft policy
recommendations
for public
comment**

FINAL REPORT

- Statewide strategy and pathways to achieving energy policy objectives
- Legislative and policy recommendations
- Description of engagement process and how different perspectives informed state energy strategy

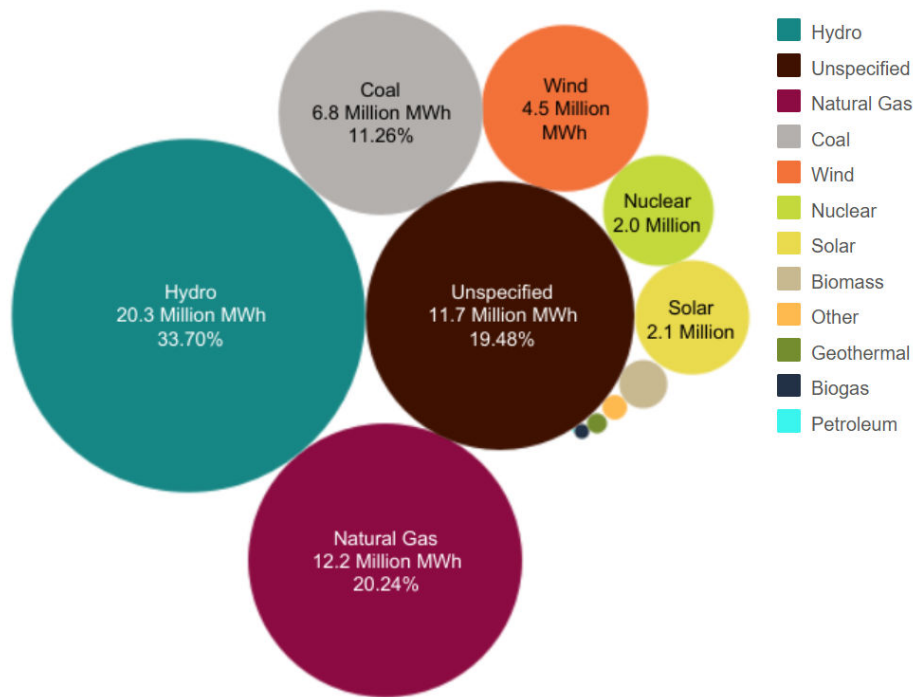
OREGON'S ENERGY FLOW



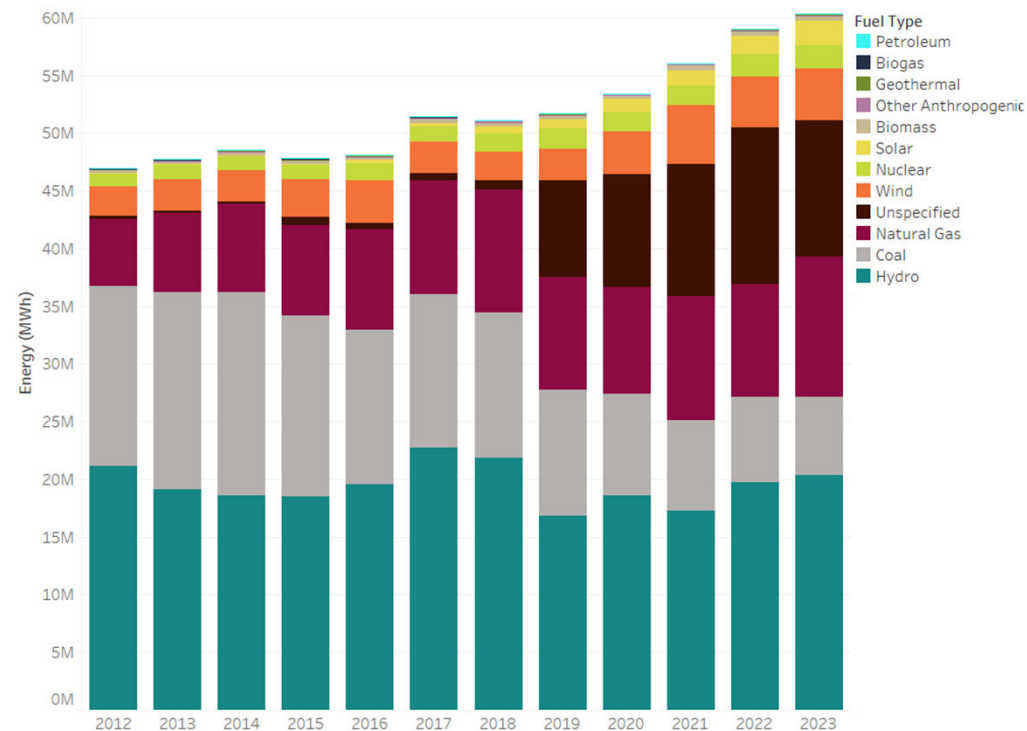
Numbers are in trillions of British thermal units (Btus)

SOURCES OF ELECTRICITY OREGONIANS USE

Resources Used to Generate Oregon's Electricity (2023)



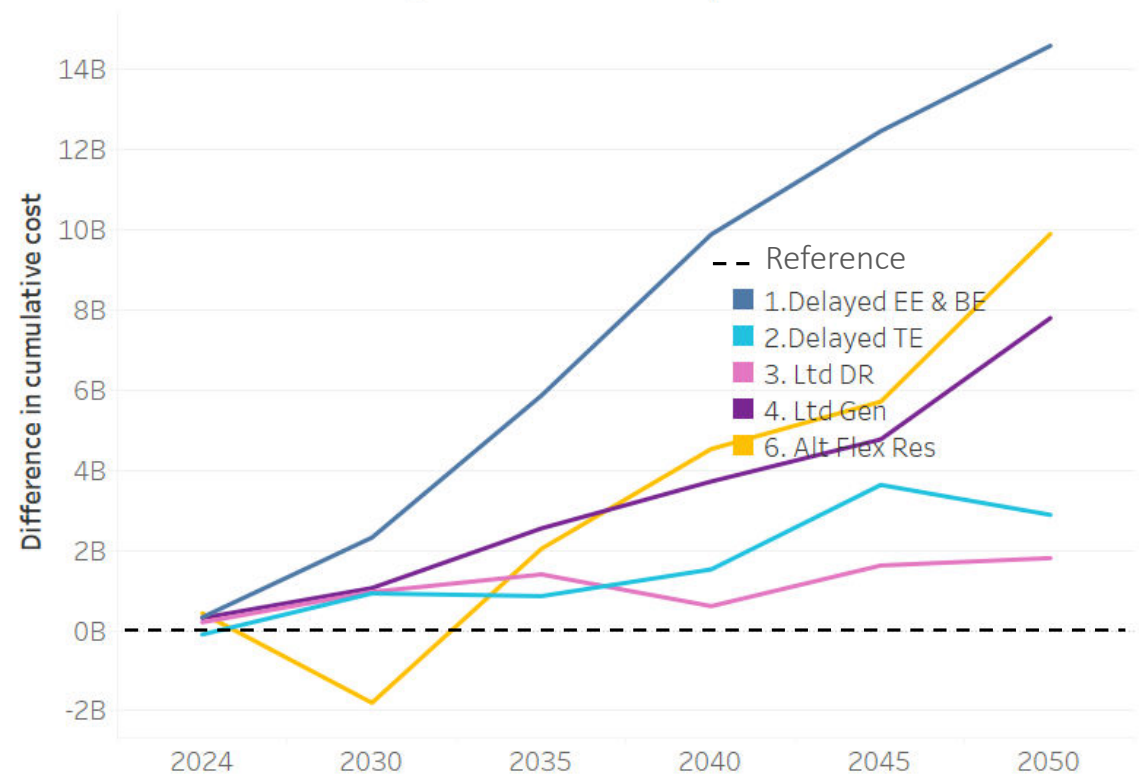
Resources Used to Generate Oregon's Electricity Over Time



LEAST-COST PLANNING

- The Reference Scenario from the model was the least-cost pathway to meet our energy and climate objectives.
- Other pathways modeled cost more.

Difference to Reference (Cumulative PV \$B)



FIVE PATHWAYS TO GUIDE OREGON



1. Energy Efficiency: Advance energy efficiency across buildings, industry, and transportation sectors, including by expanding access to and appeal of multimodal transportation options, to deliver the benefits of a more efficient energy system.



2. Electrification: Increase electrification of end uses across the economy, including in transportation, buildings, and industry, while incorporating measures to safeguard reliability and support affordability.



3. Clean Electricity: Invest in clean electricity infrastructure to maintain reliability and promote load flexibility to reduce system costs.



4. Low-Carbon Fuels: Advance the use of low-carbon fuels in the hardest-to-electrify end uses to achieve GHG emissions reductions while maintaining industry competitiveness and a reliable electricity grid.



5. Resilience: Strengthen resilience across all levels of the energy system, including utilities, communities, and customers, enhancing Oregon's ability to adapt to climate change and mitigate other risks.

Implementation of each pathway must consider burdens and benefits to environmental justice communities and apply an equity lens to prevent further disproportionate impacts to historically and currently marginalized communities.

EXAMPLE POLICIES TO DEPLOY THE PATHWAYS

Clean Electricity



3. Clean Electricity. Invest in clean electricity infrastructure to maintain reliability and promote load flexibility to reduce system costs.

Policies:

- 3a. Facilitate energy infrastructure enhancement and expansion while avoiding, minimizing, and mitigating negative impacts on natural and working lands. *(Utility-scale and distributed energy resources)*
- 3b. Enable consumers to support grid needs by shifting the timing of electricity consumption for flexible loads like EVs or water heaters. *(Load flexibility)*
- 3c. Consult and engage with Tribes to understand their concerns around energy development and to identify opportunities where state policies, funding, and programs can support tribal priorities while minimizing the effects of development on environmental and cultural resources. *(Tribal consultation and engagement)*
- 3d. Collaborate with neighboring states and regional entities to address Oregon's needs as part of a regional grid. *(Regional engagement)*

EXAMPLE POLICY ACTIONS

Clean Electricity

- ✓ Establish a state transmission entity with the authority to (1) identify and designate transmission corridors; (2) pursue partial siting and permitting approvals for future projects in those corridors; and (3) provide direct financial support through state bonds for projects that are determined to benefit the public interest.
- ✓ Direct the Oregon Department of Energy to conduct a study on barriers preventing construction and interconnection of permitted projects and recommend actions to overcome barriers.
- ✓ Report on developments in emerging technologies, including long-duration storage, enhanced geothermal, floating offshore wind, and small modular nuclear reactors, to identify the role they can play in meeting the state's electricity needs and opportunities for pilot programs in the near-term.

OPPORTUNITIES FOR PUBLIC COMMENT

**Submit comments on this Draft Oregon Energy Strategy
by September 22
through ODOE's online comment portal:**

<https://odoe.powerappsportals.us/en-US/energy-strategy/>



Slide 31

JB1

[@KALEZ Jennifer * ODOE] can we add a QR code to this slide?

BENNER Janine * ODOE, 2025-09-08T18:37:58.339

Agenda Item E (Information Item)

PUBLIC COMMENT

Time Limit – 7 Minutes per commentor



How to Raise Your Hand in Webex:

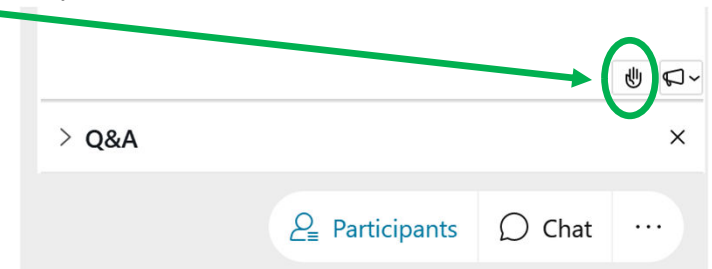
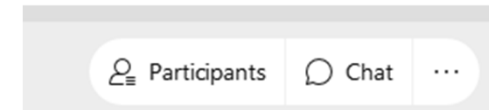
Webinar Participants

The bottom right of the main window is a set of icons:

Click on “Participants”

The bottom right of the participant window is a hand icon, click on the hand:

Clicking on it again will lower your hand.



Phone Participants

Press *3 on your telephone keypad to raise your hand.

Press *3 again on your telephone keypad to lower your hand.

WORKING LUNCH BREAK



Agenda Item F (Information Item)

Government Ethics, Public Meetings Law, and Ex Parte Contact Overview

Patrick Rowe, Senior Assistant Attorney General

September 19, 2025



Oregon Government Ethics Law

- ORS Chapter 244 & OAR Chapter 199
 - Apply to all elected and appointed officials, employees and volunteers at all levels of state and local government.
 - Prohibits use of office for financial gain.
 - Limits gifts that an official may receive per calendar year.
 - Requires public disclosure of financial conflicts of interest and annual disclosures of sources of economic interest.

Oregon Government Ethics Commission

- The Oregon Government Ethics Commission (OGEC) administers and enforces Oregon's government ethics laws and rules.
- Questions about your obligations under the ethics laws and rules should be directed to OGEC.

OREGON
GOVERNMENT ETHICS
LAW

A GUIDE FOR PUBLIC OFFICIALS



Oregon Government Ethics Commission
3218 Pringle Rd. SE, Suite 220
Salem, OR 97302-1544
Telephone: 503-378-5105
Fax: 503-373-1456
Web address: www.oregon.gov/ogec

Prohibition on Use of Office for Financial Gain



Public official may not use or attempt to use official position or office to obtain financial gain or avoid financial detriment if gain or avoidance would not be available but for the position/office.



Not applicable to:

Any part of an official compensation package

Reimbursement of expenses.

An unsolicited award for professional achievement.

Gifts that do not exceed specified limits.



Gift Limit

- Public official, candidate, relative or member of household may not solicit or receive, directly or indirectly, any gift or gifts with an **aggregate value in excess of \$50 from any single source during a calendar year.**

Conflicts of Interest

- **Official Action:** You must be taking an official action within your role as a public official. This could be a vote, another decision, or recommendation.
- +
- **Financial Impact:** Your action must create or potentially create a financial impact. That impact could be a financial benefit or detriment.
- +
- **Specific People:** The financial impact must affect specific people: You, your relatives or a business associated with you or your relatives.

= Conflict of Interest

Conflicts of Interest

- Actual Conflict: arises when Council member may take an action as a Council member that would be to private financial benefit or detriment of the member, member's business, relatives or relative's business.
- Potential Conflict: same as actual conflict but action could have financial effect.

Methods for Handling Conflict of Interest

Actual Conflict

- Announce publicly the nature of the actual conflict and:
 - refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises;
 - refrain from voting on the issue (unless necessary for quorum; still may not participate in discussion of issue)

Methods for Handling Conflict of Interest

Potential Conflict:

- Announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official

Annual Statement of Economic Interest

On or before April 15 of each year EFSC members must file with the Oregon Government Ethics Commission a verified statement of economic interest

Information about what must be included in the annual statement is in the OGEC Public Official Guide

Safe Harbor

- No “safe harbor” based on DOJ advice re: compliance with ethics laws.
- Limited “safe harbor” based on OGEC advice.
 - Protection applies only during the penalty phase, after OGEC has determined that a violation has occurred. If there was reliance on staff advice or a Staff Advisory Opinion, the Commission may consider the reliance during the penalty phase.
 - If reliance was on a Commission Advisory Opinion, the Commission may not impose a penalty.

Bias

- The range of “conflicts” covered by state ethics law does not include matters of personal bias.*
- Nevertheless, due process dictates that decisionmakers be impartial.
- You should always consider whether your impartiality is affected by a possible personal bias.
- Council members should avoid contacts that appear to compromise their impartiality.



Oregon Public Meetings Law

Enforcement of Public Meetings Law

- Any person affected by a decision of a governing body of a public body may commence a suit in the circuit court OR bring a complaint to the OGEC.
- Oregon Government Ethics Commission (OGEC):
 - Provides training on the PML, interprets and applies PML
 - Investigates alleged violations and enforces against any violation of the PML
 - May impose civil penalties for which board members are personally liable
- Questions about your responsibilities re: compliance with PML are best directed to OGEC.

Public Meetings Law Policy

ORS 192.620:

The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent that decisions of governing bodies be arrived at openly.



Basic Requirements



All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend.*



A quorum of the governing body may not meet in private for the purpose of deciding on or deliberating toward a decision on any matter.

Unintentional “meetings”



Beware group emails



Information emails are OK



But do not “Reply All” – responses could turn the exchange into a public meeting

If serial communications (e.g., emails) including through intermediaries reaches a quorum, that constitutes a meeting (and would be a violation)

“Meetings” that are not subject to the PML

- Social gatherings: A purely social gathering is not a meeting, but can inadvertently become one if (1) a quorum is present and (2) Council business is discussed.
- On-site inspections: are not meetings, but the Council may not deliberate toward any decision. (ORS 192.610(7)(b)).
- EFSC review of security programs re: nuclear power plants, installations and transportation of radioactive material from or to such a plant or installation. (ORS 192.690(2))

Mitigating Risk

Best practice: Don't discuss Council business with other Council members outside a properly noticed public meeting.

May speak with ODOE staff, the Council Secretary or DOJ legal counsel.

Executive Sessions (ORS 192.660)

- Executive session – part or all of a public meeting in which Board/Council members confer, which is closed to the public*
- Reasons to hold (among others):
 - Consult with counsel re: current or likely litigation;
 - Consider information or records that are exempt from public inspection
- Can't take final action/decision in executive session.

Procedures for Public Meetings

**Public meetings must be held within
“geographic boundaries” of the governing body.**

- EFSC’s boundaries = all of Oregon
- EFSC rules allow Council to vary the location of its meetings

Public *Attendance* only

No requirement in statute/public meetings laws
that public be allowed to participate.

EFSC rule allows opportunity for general public
comment on matters that are not closed.

Procedures

Control over Public Input: Chair can impose reasonable restrictions on order, length and scope of public comments.

Chair may expel any person who engages in conduct that disrupts an EFSC meeting.



Ex Parte Communications

What is an ex parte communication?

An oral or written communication to an agency decision maker [Council member] not made in presence of all parties to a hearing, concerning a fact in issue in the proceeding.



Communications from Staff

The definition of ex parte communications excludes (allows) communication from agency staff or counsel about legal issues or facts in the record. (OAR 137-003-0660(1))

Examples of ex parte communications



Telephone call



A comment
during lunch
or after a
Council
meeting.



An email or
text



A letter

If you receive an Ex Parte Communication

- You must:
 - Give all parties notice of the substance of the communication, if oral, or a copy of the communication, if written; and
 - Provide any party who did not present the ex parte communication an opportunity to rebut the substance of the ex parte communication.
- The agency shall include in the record of the contested case proceeding:
 - The ex parte communication, if in writing;
 - A statement of the substance of the ex parte communication, if oral;
 - The agency's notice to the parties of the ex parte communication; and
 - Rebuttal evidence, if any.

Resources

- Oregon Government Ethics Law:
A Guide for Public Officials (OGEC)
<https://www.oregon.gov/ogec/Documents/2021%20PO%20Guide%20Final%20Adopted.pdf>
- DOJ Public Records and Meetings Manual
<https://www.doj.state.or.us/oregon-department-of-justice/public-records/attorney-generals-public-records-and-meetings-manual/>

Agenda Item G (Action Item)

Modernization Rulemaking Notice of Proposed Rulemaking Consideration

Tom Jackman, Siting Policy Analyst & Rules Coordinator

September 19, 2025



Background - Rulemaking Process



Modernization Rulemaking – Rule Overview

Minor Updates

- Correcting outlining and reference errors
- A reversion of an inadvertent rule change
- Updating rule version references, e.g., “Applicant must follow other agency rules dated Jan 1, 2012.”
- The removal of applicability provisions, given the passage of time

Modernization Rulemaking

Modest Updates

- Formalizing the process for providing the Department of Defense (DoD) notice of new energy facility applications
- The removal of the requirement that applicants and site certificate holders must print copies of all their various submissions by default, but still allowing for direction by the Department to do so

Modernization Rulemaking

More Significant Updates

- Directing parties to submit any data used to produce maps or other geospatial data in an acceptable format as approved by the department
- The removal of all newspaper circulation notification from the siting process
- The removal of preconstruction requirement of having all construction rights before any construction could occur for all types of facilities

Council Options

Option 1 - Recommended

Approve the initiation
of informal rulemaking
as presented

Option 2

Approve the initiation
of informal rulemaking
as presented, with
specific changes

Option 3

Deny the initiation of
formal rulemaking

Council Deliberation

Agenda Item H (Action Item)

Amendment Rulemaking Final Consideration

Tom Jackman, Siting Policy Analyst & Rules Coordinator

September 19, 2025



Amendment Rulemaking

Agenda Overview

- Review of rulemaking process
- Background and overview of proposed rule language
- Review of Public Comments

Background - Rulemaking Process



Background - Rulemaking Process

Timeline – Informal Rulemaking

Event	Date
Informal Rulemaking initiated by Council	Feb 23, 2024
Rulemaking Advisory Committee 1	June 26, 2024
Rulemaking Advisory Committee 2	Sept 26, 2024
Rulemaking Advisory Committee 3	April 29, 2025

Amendment Rulemaking - RAC

Energy Provider or Investor-Owned Utility

Lenna Cope – Portland General Electric

Andrew Bauer – NW Natural

Patrick Collins / Chad Campfield – Umatilla Electric Cooperative

David Lawlor – NextEra Energy

Energy Advocacy or Trade

Alyssa Forest / Angela Crowley-Koch – OSSIA

Paul Hicks – Tetra Tech

Emily Griffith – Renewable Northwest

Agency / Government

Branden Pursinger – Oregon Counties

Jon Jinings – DLCD

Georgia Macnab – Sherman County

Public Interest

Irene Gilbert – Public

Don Hilderbrand – Public

Yvonne Scott – Public

Jessica Bernardini – Public

Resource Interest

Rudy Salakory – Friends of the Gorge

Amendment Rulemaking

Consideration of Final Rules

1. Improve the clarity of the rules by resolving ambiguities
2. Make changes to improve Council's amendment process based on lessons learned
3. Update the rules to ensure compliance with new statutes, revised rules, and recent direction of the courts.

Amendment Rulemaking – Three Categories

1. Minor
2. Modest
3. Significant

Amendment Rulemaking - Minor

- Removal of outdated printed copy requirements (OAR 345-027-0110(4))
- Rule language throughout modified to improve the readability of the rule (various)
- Updated rule language to reflect recent rulemakings, such as the addition of the Council's Wildfire Prevention and Risk Mitigation standard (OAR 345-027-0210(g))
- Modifying the name of "Type C" amendments to "a pre-operational request for amendment" to reflect the proposed loss of the A/B amendment types (OAR 345-027-0380)
- Removed duplicative rule language in OAR 345-027-0375(2)(e) (Council's Scope of Review), as this rule language is incorporated in OAR 345-027-0375(2)(b)

Amendment Rulemaking - Modest

- A new documentation requirement to help the Department track compliance with the Council-approved final retirement plan (OAR 345-027-0110(7))
- New direction that explains how a certificate holder may apply to Council to release a portion of the site from the terms and conditions of the site certificate (OAR 345-027-0110(10))
- Clarifying how request for amendment analysis areas (“RFA analysis areas”) are to be determined (OAR 345-027-0360)
- Adding new requirements for how previously submitted evidence may be utilized in a pending amendment request (OAR 345-027-0360(4))

Amendment Rulemaking - Modest

- Providing the Council with additional flexibility on the location of the public hearing on the amendment based on limited public interest or conditions like inclement weather (OAR 345-027-0367(2))
- Modifying the public comment period to ensure that it does not end until at least one week after the public hearing on the amendment (OAR 345-027-0367(3))
- Removing the requirement for site certificate holders to demonstrate a need for extension requests as Council has no need standard for purposes of seeking an extension (OAR 345-027-0385(1))
- Removing no longer relevant rule language directing what portion of the construction extension deadline rules apply based on when the request was submitted as it relates to previously amended rules (OAR 345-027-0385(5))

Amendment Rulemaking – Significant

Removal of Type A/B Amendment Paths

Type A and B have only a few key differences:

Type A	Type B
Always a public hearing	No hearing during public comment period
Possibility of a contested case	No possibility for a contested case

Amendment Rulemaking – Significant

Removal of Type A/B Amendment Paths

- Type B amendment requests are faster!
- Hard to determine if this is because of the streamlined process or just because things that qualify for type B are by their nature less complex
- Staff proposes to eliminate the dual track and replace with an inherently more flexible process
- Eliminates the need to do an amendment determination request for the purposes of determining the type A/B classification

Amendment Rulemaking – Significant

Removal of Type A/B Amendment Paths

Type A	Type B
Always a public hearing	No hearing during public comment period
Possibility of a contested case	No possibility for a contested case

Amendment Rulemaking – Significant

Removal of Type A/B Amendment Paths

PROPOSED APPROACH

Always a public hearing, but more flexible as to the location

No contested case possibility for any request for amendment

Amendment Rulemaking – Significant

Removal of Contested Case Option

Can we even do this?

Yes.

Amendment Rulemaking – Significant

Removal of Contested Case Option

- Original site certificate application will still require a contested case per statutes.
- However, there is no similar requirement in the amendment statutes.
- Council has the authority to establish by rule what types of amendments, if any, go through a contested case.

Amendment Rulemaking – Significant

Removal of Contested Case Option

Should we do this?

Also, yes.

Amendment Rulemaking – Significant

Removal of Contested Case Option

Two main issues:

1. Contested case requests almost never meet the threshold of justifying a contested case. If the Council determines there are still outstanding issues, they can remand the Proposed Order to staff to address them.
2. Contested case allows for possibility of further argument of potential issues, but this possibility is, by its nature, very late in the game.

Amendment Rulemaking – Significant

Removal of Contested Case Option

What can we replace this process with?

Amendment Rulemaking – Significant

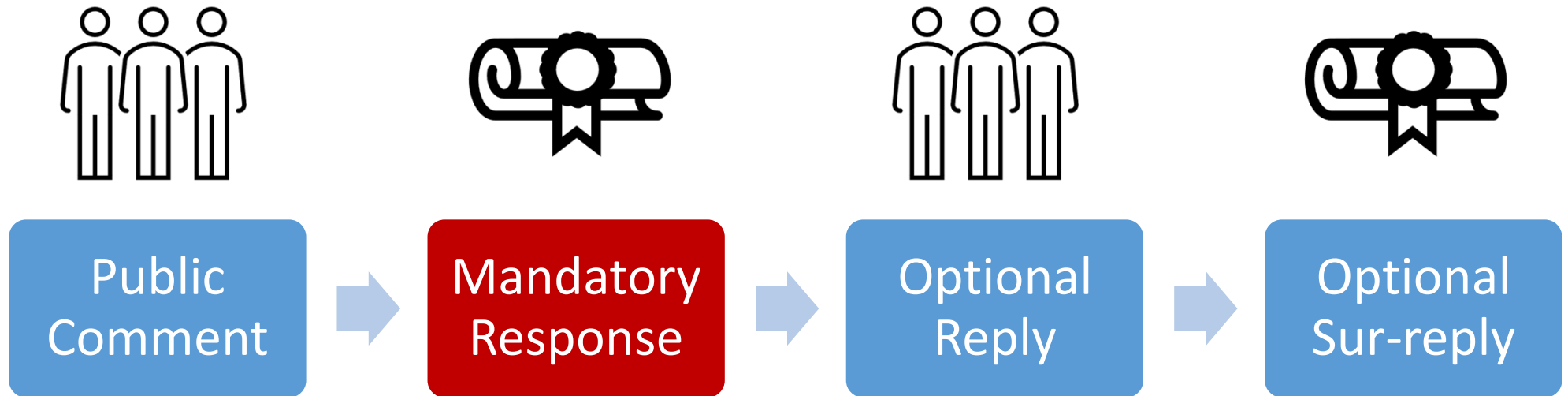
Removal of Contested Case Option

Two main goals of a new process:

1. Improve quality and utility of public participation
2. Ensure any relevant data or arguments in possession of the public are explored in a timely fashion – as early as possible

Amendment Rulemaking – Significant

Removal of Contested Case Option



Amendment Rulemaking – Significant

Removal of Contested Case Option

What changes with the proposed process:

- Public commentors now learn almost immediately what, if any issues there are with the comments submitted during the public comment period
- Public commentors can now timely remedy their comments to provide missing facts or analysis if they initially failed to do so
- Any information from the remedied comments is available to the department **prior to review by the Council** of the draft final order

Amendment Rulemaking – Significant

Process Steps

Current Type A Amendment Process



Current Type B Amendment Process



Proposed Amendment Process



Amendment Rulemaking – HB 3681

Time Extension Requests

- Previous
 - Mandatory Condition (OAR 345-025-0006(4) - The current practice of Council is a three-year construction commencement deadline in the site certificate
 - OAR 345-027-0385(4) allows for up to two, three-year extensions,
 - Total = **nine years to begin construction**
- New
 - HB 3681 requires that the initial period to begin construction be at least six years.
 - Proposed change to rules allows for any extension, as long as the total pre-construction time period does not exceed nine years
 - Total = **nine years to begin construction**

Amendment Rulemaking – HB 3681

Site Boundary Increase

- Existing Council rules allow for some site boundary increases to not require amendment
- Supreme Court held that any site boundary change requires a mandatory amendment request
- HB 3681 codifies the existing rules
- This means that by **not** changing the rules, come Jan 1, 2026, the rules will reflect Oregon law
- Until Jan 1, 2026, the Department will require any site boundary requests to undergo a mandatory amendment request

Amendment Rulemaking

Proposed Process Steps

1. Preliminary Request for Amendment

- Public and reviewing agency notice of receipt of preliminary request for amendment within 14 days of receipt
- ODOE has **45 days (Type A – 60 days)** to determine if complete or incomplete. Request for additional information if incomplete

2. Complete Request for Amendment

- Notice to certificate holder of completeness and date of PO issuance. PO issuance is no later than **21 days (Type A – 60 days)** after date of notice.

Amendment Rulemaking

Proposed Process Steps Cont'd.

3. Proposed Order

- Public and reviewing agency notice of complete request for amendment and PO
- Comment period
- Public Hearing in front of Council in the vicinity of the project is default. **Council has opportunity to determine if in person or in the vicinity is warranted.**
- **Replies to comments. Mandatory for certificate holder and optional for Department**
- **Commentors have opportunity to perfect their comments based on certificate holder and Department responses**
- **Certificate holder and Department may provide sur-replies.**

4. Final Order

- **Draft of Final Order issued within 21 days of sur-replies**
- Council reviews **Draft of Final Order** and adopts, modifies or rejects
- If amendment is approved, an amended site certificate is issued

Amendment Rulemaking

Public Comments

Amendment Rulemaking – Public Comments

Oral Comments at July 18, 2025 Hearing:

- Irene Gilbert
- Angela Crowley-Koch

Written Comments:

- Nathan Baker, on behalf of the Friends of the Columbia Gorge (Friends)
- Wendy King
- Greg Larkin
- Angela Crowley-Koch, on behalf of the Oregon Solar & Storage Industries Association (OSSIA)
- Irene Gilbert, who submitted multiple comments

Amendment Rulemaking – Public Comments

Insufficient Notice

Comment: Insufficient notice was provided for the rulemaking via the caption (“Improving EFSC Amendment Process Through Greater Clarity and Enhanced Public Comment Process”) as well as the notice itself.

Staff Response:

- Oregon’s notice law requires a short caption that “reasonably identifies the subject matter”
- The rule text and explanatory materials made the scope clear
- ORS 183.335(11)(c) specifically states that new or amended rules cannot be subject to challenge based solely on a failure to comply with the statutory requirements of a notice’s caption

Amendment Rulemaking – Public Comments

Retention of Need Showing

Comment: Request that Council reject the removal of the requirement for those seeking a construction extension to “include an explanation of the need for an extension.”

Staff Response:

- A request-content requirement (“include an explanation of need”) is not a separate legal approval standard, it is a completeness requirement
- This completeness requirement has been a source of confusion, taking additional resources and time
- Projects seeking an extension must still comply with all applicable Council standards at the time of the extension amendment request

Amendment Rulemaking – Public Comments

Public Comment Req.

Comment: Proposed language of OAR 345-027-0367(7), which describes how public commentors “must” comment is unfairly restricting

Staff Response:

- Comments can have an impact on the process even if they are missing an element specified in 345-027-0367(7) and the rules should not suggest otherwise
- Staff recommends changing “must” in 0367(7), (7)(a), and in (7)(b) to “should.”
- Staff suggests modifying (8)(c) to clarify that certificate holders must identify what is missing from the comment that makes responding not possible



Amendment Rulemaking – Public Comments

Public Comment Req.

Comment: Proposed language of OAR 345-027-0367(7), which describes how public commentators “must” comment is unfairly restricting

Staff Response:

- Comments can have an impact on the process even if they are missing an element specified in 345-027-0367(7) and the rules should not suggest otherwise
- Staff recommends changing “must” in 0367(7), (7)(a), and in (7)(b) to “should.”
- Staff suggests modifying (8)(c) to clarify that certificate holders must identify what is missing from the comment that makes responding not possible



Amendment Rulemaking – Public Comments

Public Comment Req.

(7) Comments – both written and oral – submitted during the public comment period **should** be made with sufficient specificity to afford the Council, the Department, and the certificate holder an opportunity to respond to the issue(s) raised in the comment.

(a) To raise an issue with sufficient specificity, a person **should**, in their comment:

(A) Identify the recommended findings of fact, conclusions of law or conditions of approval identified in the proposed order to which they object;

(B) Specify the Council standard or other applicable state and local requirements on which their objection is based; and

(C) Present facts or statements supporting that objection.

(b) If a comment is not made with sufficient specificity, the Department **may lack sufficient information or analysis to** make any revisions to the draft of the final order based on that comment.

Amendment Rulemaking – Public Comments

Rule Applicability

Comment: Concerns about the applicability of the rules to pending or future applications

Staff Response:

- The universe of applicants affected by the rule change is limited and known
- Staff is working with potentially affected parties and suggests timing the rule filing to minimize impacts
- Staff does not recommend adding additional language that will quickly become obsolete

Amendment Rulemaking – Public Comments

Loss of Contested Case Possibility

Comment:

- All but one of the public comments submitted opposes the removal of the contested case possibility in the proposed rules
- The primary basis for this opposition is the argued loss of “due process” and the related claim of an inability to adequately develop the record

Amendment Rulemaking – Public Comments

Loss of Contested Case Possibility

Staff Response:

As stated in ORS 469.405:

“A site certificate may be amended with the approval of the Council. The Council may establish by rule the type of amendment that may be considered in a contested case proceeding.”

Amendment Rulemaking – Public Comments

Loss of Contested Case Possibility

Due Process

- Meaningful notice
- Opportunity to be heard
- Ability to appeal the final decision before an impartial decision maker

Proposed Process

- Notice requirements not proposed to be changed
- Improves opportunity to be heard, with responses to every comment and ability to correct or clarify comment
- Clear preservation pathway to appeal final decision

Amendment Rulemaking – Public Comments

Loss of Contested Case Possibility

- Current process of contested case screening:
 - Consumes time
 - Duplicates written disputes
 - Rarely results in a contested case under existing standards—yet still delays a final, reviewable order
- Proposed process reflects the intent of the public comment period
 - Too often the public has demonstrated the belief that they should hold onto facts until a future possible contested case
 - If members of the public are aware of evidentiary, legal, or policy issues based on the proposed order drafted by the Department, they should make these issues known during the public comment period

Amendment Rulemaking – Public Comments

Loss of Contested Case Possibility

- Commentors suggest that proposed loss of contested case possibility is designed to “churn out amendments to site certificates as quickly as possible”
- Based on analysis done by the Department, the mandatory response, reply, and sur-reply will take roughly the same amount of time that the contested case determination previously took
- The difference is that the time spent under the proposed process will provide value to the commentor and enrich the evidentiary record for the certificate holder, the Council, and any future Supreme Court review

Amendment Rulemaking – Public Comments

Court of Appeal Review

Comment: Several commentors argued that the possibility of appeal to a Court of Appeals enhances the public's ability to be heard

Staff Response:

- HB 3681 moots this argument. As stated in the newly amended law in ORS 469.405(1) (emphasis added):
- “[J]udicial review of the council’s approval or rejection of a request for an amendment to a site certificate or decision related to or arising from a contested case on an amendment, **regardless of whether a contested case was held prior to the council’s decision, is conferred solely on the Supreme Court.**”

Amendment Rulemaking – Public Comments

Site Surveys and Boundary Changes

Comment: Concerns raised about site surveys and modifications to site boundaries proceeding without notice

Staff Response:

- Access to property is governed by property rights, easements/permissions, and coordination with reviewing agencies—not by the procedural amendment rules at issue here

Amendment Rulemaking – Public Comments

Site Surveys and Boundary Changes

Staff Response Continued:

- The amendment thresholds, commonly referred to as the “three could,” do ensure that substantive changes trigger an amendment with public notice and an opportunity for comment.
 - Could result in a significant adverse impact that the Council has not addressed in an earlier order and the impact affects a resource or interest protected by an applicable law or Council standard;
 - Could impair the certificate holder’s ability to comply with a site certificate condition; or
 - Could require a new condition or a change to a condition in the site certificate.

Amendment Rulemaking – Public Comments

Notice of ADR Filings / Decisions

Comment: Concerns raised about amendment determination request (ADRs) filings and decisions proceeding without notice

Staff Response:

- Certificate holders make minor operational changes to facilities with some frequency that do not trigger the three could
- A certificate holder is under no obligation to submit such a request and they can and do proceed with site changes without doing so
- However, as of January 1, 2026, any proposed change that would add area to the site boundary must at a minimum submit an ADR

Amendment Rulemaking – Public Comments

Changes to Monitoring Plans

Comment: Concerns raised about possible changes to monitoring and mitigations plans occurring without public participation

Staff Response:

- ORS 469.402 (emphasis added) states the following:
 - “If the Energy Facility Siting Council elects to impose conditions on a site certificate or an amended site certificate, that require subsequent review and approval of a future action, the council may delegate the future review and approval to the State Department of Energy if, in the council’s discretion, **the delegation is warranted under the circumstances** of the case.”
- Council has the authority to delegate; the question is whether this is warranted
- The time to object to this delegation is during the public comment period or on the proposed final order



Council Options

Option 1 - Recommended

Approve the draft
permanent rules as
proposed

Option 2

Approved the draft
permanent rules as
proposed, with changes

Option 3

Deny the draft
permanent rules

Council Deliberation

BREAK

Agenda Item I (Action Item)

Council Appointment to the Oregon Climate Trust Offset Committee

Todd Cornett, Assistant Director for Siting/Council Secretary

September 19, 2025



The Climate Trust

- Sole Qualified Organization

OAR 345-001-0010(49)(c)(B) - *Require that decisions on the use of the offset funds are made by a decision-making body composed of seven voting members **of which three are appointed by the Council (emphasis added)**, three are Oregon residents appointed by the Bullitt Foundation or an alternative environmental nonprofit organization named by the body, and one is appointed by the applicants for site certificates that are subject to OAR 345-024-0550, 345-024-590, and 345-024-0620 and the holders of such site certificates; and*

- The Climate Trust Board – original decision-making body
- The Oregon Offset Committee – current decision-making body



Current Council Appointees to Oregon Offset Committee

- Cindy Condon – EFSC Member.
Term: October 23, 2020 - October 22, 2024
- Brad Hunter – Vice President and Senior Business Lender with Craft3.
Term: April 27, 2022 - April 26-2026
- Morgan Rider – Thriving Design Cofounder
Term: January 20, 2023 - January 19, 2027



Council Options

Option 1 - Recommended

**Reappoint
Cindy Condon to a
second four-year term**

Option 2

**Appoint another
Council Member to a
four-year term**

Council Deliberation



ADJOURN

