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To: Energy Facility Siting Council

From: Tom Jackman, Rule Coordinator

Date: April 3, 2026

Subject: Agenda Item B (Action Item): Modernization Rulemaking Final Consideration for the April 17, 2026, EFSC Meeting

Attachments: Attachment 1 – Draft Proposed Rules
Attachment 2 – Public Comments

STAFF RECOMMENDATION

Staff requests the Council's authorization for staff to file permanent amended rules based on proposed amendments as shown in Attachment 1.

BACKGROUND

On March 21, 2025, the Council initiated rulemaking to review its rules for any minor corrections and updates that would not otherwise merit their own rulemakings. At this meeting, the Council approved staff's recommended scope and directed staff to proceed without a Rulemaking Advisory Committee and instead work internally to prepare a draft of proposed rules.

On September 19, 2025, the Council approved the issuance of a notice of proposed rulemaking along with draft proposed rules to be presented for public comment. This public comment period ran through November 30, 2025. Two comments were submitted, discussed below. A public hearing was held at the Council's November 21, 2025. At this hearing, comments from the Council prompted staff to make some additional changes to the proposed rules, discussed below. The addition of these changes is behind staff's recommendation that the Council issue an updated notice of proposed rulemaking so that the public may have an opportunity to comment.

On December 19, 2025, the Council directed staff to file a second notice of proposed rulemaking, to allow the public to comment on additional proposed changes made to the rules. A public hearing was not held during this time. Two written comments were submitted, which are discussed below and included in their entirety as Attachment 2.

What follows is a summary of the rules and a summary of the comments received, along with staff's recommended response.

SUMMARY OF PROPOSED RULES

The draft proposed rules consist of a great many minor corrections, e.g., correction of outlining errors or incorrect references, that would otherwise qualify as “statutory minor corrections.” These changes can be done without the normal rulemaking process. However, bundling these minor changes in a single rulemaking creates a much cleaner rulemaking record. Other very minimal changes include a reformatting of OAR 345-022-0050 to make it flow better, a reversion of an inadvertent rule change done in a prior rulemaking (OAR 345-023-0030(2)) and updating the version of other agency rules that are required to be met to a more recent time period. See OAR 345-022-0060(1) and (2).

In addition to these corrections and updates, these draft rules contain the following, more substantive proposed rule changes intended to update and modernize the Council’s rules:

Data Submission Requirements (OAR 345-001-0100)

Staff proposes a new rule that directs parties to submit any data used to produce maps or other geospatial data in an acceptable format as approved by the department. While many applicants are already submitting data in the preferred formats, some do not, and staff recommends introducing this new rule to clarify how data should be submitted to improve the review of data submissions as well as to enhance the compliance program.

DoD Notice (OAR 345-015-0110)

Staff proposes formalizing the process for providing the Department of Defense (DoD) notice of new energy facility applications. Staff already notifies DoD of new projects, but DoD requested that this new rule be added to formalize this process, and staff see no reason not to do so.

Removal of Hard Copy Print Requirements (OAR 345-015-0200(2), 345-015-0310(5), 345-020-0006(2), 345-020-0016(1), 345-021-0000(7), 345-027-0110(4), 345-027-0230(3))

Staff proposes the removal of the requirement that applicants and site certificate holders must print copies of all their various submissions by default, while still allowing, where applicable, for the possibility that the Department might request copies to be printed should a member of the public request one. This is another legacy rule that made more sense when these hard copy requirements were introduced, but makes little sense today.

Removal of rule version requirements (OAR 345-022-0040(4), 345-022-0080(4), 345-022-0100(4))

When several of Council’s standards were previously updated, language was inserted to help new applicants and pending applicants navigate applicability issues. Given the passage of time, these applicability provisions are no longer relevant.

Removal of preconstruction limitation (OAR 345-025-0006(5))

This proposed change would allow all energy facilities to begin preconstruction even if they lack the construction rights to all parts of the site. Access rights would still be needed for the locations to be constructed. This construction allowance currently applies to wind facilities,

transmission lines and pipelines, but not to other types of energy facilities. It is not clear why this rule should only apply to wind facilities, transmission lines and pipelines and so staff proposes removing this restriction. The draft proposed rule language increases clarity and efficiency while also ensuring there is no conflict with how the Department already implements these provisions as they relate to any conditions that apply to pre-construction. The proposed rules further clarify that these changes are retroactive.

COMMENTS ON THE RULES

Obsidian Solar Center LLC (“Obsidian”)

Obsidian supports EFSC’s proposed removal of the preconstruction limitation in OAR 345-025-0006(5) and the clarification that the revised rule applies retroactively to existing site certificates. However, Obsidian asserts that the Draft Proposed Rules are incomplete because they retain subsections (a) and (b), which the commenter characterizes as remnants of the prior regulatory structure.

Obsidian argues that, once the overarching requirement to obtain construction rights for the entire site is removed, subsections (a) and (b) become grammatically and functionally disconnected from the rule and operate as residual limitations on phased construction. According to the commenter, these provisions improperly condition construction on speculative future events—such as potential route changes, amendments, or decisions not to build portions of a facility—and create a compliance standard that is difficult or impossible to demonstrate at the time construction begins. Obsidian further contends that retaining these subsections would reintroduce regulatory uncertainty, complicate project financing (including the ability to meet federal tax credit deadlines), and risk inconsistent application across facility types. They therefore request that EFSC remove subsections (a) and (b) without additional notice and comment, asserting that their removal would be a clarifying revision within the scope of the current rulemaking and consistent with state policy directives to streamline permitting and accelerate energy development.

Staff Response:

Staff appreciates Obsidian’s support for removal of the preconstruction limitation and for clarifying the rule’s retroactive application. However, staff does not agree that subsections (a) and (b) are unnecessary or merely residual provisions. These subsections are not legacy holdovers, but instead serve an important, continuing function within the revised rule by ensuring that phased construction proceeds in a manner consistent with the approved facility and does not result in partially built or abandoned infrastructure if project circumstances change. Specifically, subsections (a) and (b) provide a reasonable and enforceable standard that the portions of a facility constructed under phased development must be independently viable and intended for operation even if other portions of the facility are modified, rerouted, or not constructed. This safeguard helps prevent stranded or incomplete development that could create environmental, land use, or financial assurance concerns. Staff therefore finds that retaining subsections (a) and (b) is necessary to preserve regulatory clarity and ensure responsible implementation of phased construction and does not recommend their removal.

Constance Lee (Member of Public)

Ms. Lee expresses concern that the proposed modernization rule changes, while characterized as administrative, would have substantive impacts on rural communities and reduce meaningful public participation. She objects to the proposed allowance for construction and site clearing prior to securing construction rights for all portions of a site, asserting that this would create irreversible project momentum and limit community influence. She also raises concerns about the accuracy of developer-submitted information, citing an example where project materials allegedly included inaccurate lease representations.

In addition, the Ms. Lee asserts that proposed changes to public comment requirements—such as expectations to cite specific statutes and findings—create barriers for non-expert participants. She further objects to the closure of the record following hearings, limitations on public input during Council deliberations, and the volume and complexity of application materials relative to the time available for review.

Finally, Ms. Lee raises concerns that increased reliance on digital submissions and geospatial data may limit accessibility for rural residents and requests that hard copies of materials be made available. Overall, the commenter asserts that the proposed changes shift the balance of the siting process toward developers and away from local communities, and requests that EFSC revise the rules to preserve meaningful public participation.

Staff Response:

Staff appreciates Ms. Lee's concerns regarding public participation, transparency, and the potential impacts of large energy facilities on rural communities. However, staff does not agree that the proposed modernization rule changes reduce meaningful opportunities for public involvement or shift the balance of the process toward applicants. The proposed changes are intended to clarify existing requirements, improve procedural efficiency, and better align the rules with longstanding Council practice while maintaining the core procedural protections established in statute and rule.

With respect to phased construction, the revisions clarify that construction may occur only in areas where a certificate holder has secured the necessary rights and is in compliance with applicable site certificate conditions; the rules do not alter EFSC's authority to review, condition, or deny projects based on applicable standards.

Regarding public participation, the rules continue to provide multiple opportunities for public comment and do not require legal expertise to submit meaningful input, although comments are most effective when they relate to applicable standards. Similarly, the structure of the evidentiary record and Council deliberations reflects statutory requirements and is intended to ensure an orderly and fair decision-making process.

Finally, the use of digital materials is intended to improve accessibility and efficiency, and existing processes allow for accommodation of individuals who may require alternative access

to materials. Staff does not recommend modifications to the proposed rules in response to this comment.